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The Ingersolls.

An Instance of Hereditary Forensic Genius

By the Editor

THE English Parliament had passed the stamp act. A wave of indignation was sweeping over the colonies. The muttering thunders of popular wrath foretold stormy times,—all of which was ominous for Jared Ingersoll. For in this memorable year of 1765 he returned from abroad to his home in New Haven, bearing a royal commission appointing him Stamp-Master-General for New England.

Mr. Ingersoll was at that time forty-three years of age. He had won a prominent place at the Connecticut Bar. For the six years he had sojourned in England as the agent of the colony. His long absence from home had left him ignorant of the state of feeling in America. Nor was he alone in his inability to read the signs of the times. No less a personage than Benjamin Franklin had advised him to accept the appointment. But his New Haven townsmen were not backward in enlightening him on the subject. They speedily resolved that he ought "to resign his stamp office immediately." To this he demurred. Having honestly undertaken the duties of the position, it was not in the nature of the man to abandon it precipitately, when he unexpectedly found it to be unpopular. Then dark threats were made against his person and property. Finally he resolved to submit the matter to the legislature, which was in session at Hartford.

He had proceeded as far as Wethersfield, when he was halted in the main street of the town by a crowd of people who refused to let him pass. They demanded that he resign then and there. Lawyerlike he argued many things, and, doubtless, had the better of the debate, but they were inflexible. He must resign or else,—well, there were men present, leaning on their long rifles, who never found it necessary to shoot twice at the same target. After a long discussion, he grimly remarked: "The cause is not worth dying for," and signed the desired resignation in a spirit of disgust, rather than of fear; for none of the Ingersoll line has been lacking in courage. He is said, upon this occasion, to have been mounted upon a gray horse, and to have remarked that he was like Death in Revelation, mounted on a pale horse, with Hell at his heels.

This incident illumines like a flash light the gloomy vista of a vanished century. It shows, for an instant, a nation evolving into being. We cannot blame either of the parties to this controversy. On one side were the sturdy colonists, jealous of their rights, and inspired with the democratic spirit of the new age. On the other side was a solitary horseman, who represented the existing order and the traditions of an outworn era, not yet aware that its doom had been spoken. The former were predestined to triumph, and the latter to defeat. All were actors

in a drama, the full significance of which they little dreamed.

Mr. Ingersoll, probably somewhat piqued by his Wethersfield experience, took no active part in the Revolutionary struggle. In 1770 he was appointed admiralty judge of the middle district, and lived for some years in Philadelphia. Later he returned to New Haven, where he died in August, 1781.

His son, Jared Ingersoll, Second, graduated at Yale College in 1766, when sixteen years of age. He read law and was admitted to practise in 1773. In 1774 his father sent him abroad to complete his legal education, and he remained in Europe nearly five years. He became a student at the Middle Temple, and drank deeply at the fountains of the common law. He left London for Paris after the Declaration of Independence, and while in the French capital associated on intimate terms with Franklin and other distinguished Americans. At the close of 1778 he embarked on an American ship, which raced gallantly home, under full press of sail, with careening gunwales dipping the foaming seas, in order to avoid unpleasant interviews with British cruisers.

In 1779 Mr. Ingersoll entered upon the practice of the law in Philadelphia. Few men have displayed greater devotion to their chosen profession. A contemporary has said of him: "He avoided participation in almost everything that did not, in some way, appertain to his profession. Eminently fitted to shine in every walk of life, his ruling attachment seemed to be entirely centered in the law. To this he looked through the medium of everything else, and he contemplated everything else through the lens of the law."

His industry was remarkable. He prepared his cases for trial with laborious accuracy, and made elaborate briefs, which he rarely found it necessary to consult. No adversary ever found him unready. In preparing for an argument he would move restlessly about his office, his manner and gestures indicating that he was driving home an argument, or answering the imaginary objections of an invisible opponent. One who knew him well relates that he had often seen him, in advanced age, drawing nearer and nearer to his office window, as the sun declined, engaged in the close perusal of his books, as if unwilling to lose a moment that could be profitably employed. He wrote to his son on one occasion, as if it were a common occurrence, that he had already worked for ten hours that day, and expected to work for two or three more.

His great merit as a legal practitioner lay in his ability to detect and relentlessly expose a weak position, and to avoid the effects of a strong one. His style of address was calm, forceful, and resistless. He spoke to a jury in a conversational tone, and did not so much argue with them as make himself one of them, and lead their reason captive by the strength and simplicity of his appeals. Success almost invariably crowned his efforts.

Mr. Ingersoll was a courtly gentleman of the old school. Horace Binney, at one time his pupil, records the uniform and habitual dignity, manliness of carriage, and gentlemanliness of manner of his preceptor. He could strike hard blows, but he did so in such chivalrous and knightly fashion as to frequently convert those whom he opposed into friends and clients.

It was inevitable that such a man should be called upon repeatedly to fill public positions. He was a delegate to Congress; a member of the Convention of 1787, which framed the United States Constitution; United States district attorney; attorney general of Pennsylvania, and president judge of the Philadelphia district court. In 1812 he was the nominee of the Federalist party for Vice President, receiving 86 electoral votes as against 131 cast for Elbridge Gerry, his successful Republican opponent.

In his later years he was often associated with or opposed to his talented sons, Charles Jared Ingersoll and Joseph R. Ingersoll, in the trial of causes, and on such occasions, we are told, there was blended all the charms of parental and filial affection with a scrupulous and rigid fulfilment of professional duty. He died on October 31, 1822. As has been well said, he left the rich legacy of an illustrious and untarnished name, and was

succeeded in the profession by his sons, who not only kept his laurels green, but magnified them by adding to and interweaving them with their own.

An interesting and valuable biography of Charles Jared Ingersoll has been published by his grandson, Mr. William M. Meigs. He recounts that among young Ingersoll's schoolmates were Philip Hamilton, son of Alexander Hamilton, destined to meet the same fate as his illustrious father, and George W. P. Custis, Mrs. Washington's grandson. His friendship with the youthful Custis led to his being present on an occasion when President Washington smoked the pipe of peace with an Indian embassy, and once he dined at the presidential table, and was duly impressed by the dignity and decorum of the occasion.

Charles Jared Ingersoll studied at Princeton College and under private tutors. Later he read law, and was admitted to the bar in 1802, when not quite twenty years of age. In this year he went abroad, visiting England, France, Germany, the Netherlands, and Switzerland. Upon his return, in 1803, he entered upon the duties of his profession. His extremely youthful appearance was not calculated to attract clients, but his ability soon became recognized, and his practice gradually grew, until in a few years' time he was in receipt of an income of $6,000 a year,—a large sum in those days. He records that in a single day he was consulted by a merchant ruined by a verdict against him, and whose future depended upon his ability to obtain a new trial; by a half-distracted father who desired to recover his daughter who had been enticed from his home; by a man who had failed in business, and desired not only his professional aid, but wished him to act as his second in some anticipated duels; and by a lady who, having married a man much younger than herself, was heartbroken at finding that her supposed husband had been married to another woman. This was a profitable day from a business standpoint, and richer still in opportunities for social service. No knight-errant, devoted to the redress of wrongs, ever had so wide a field of action as the busy practitioner.

In 1812 Mr. Ingersoll was elected to Congress. Those were trying years for the young Republic, which was engaged in its second death grapple with England. He strongly supported every measure for the vigorous prosecution of the war. In January, 1814, he answered impromptu the first set speech of Daniel Webster, then a new member from New Hampshire. Later in the same year, when Mr. Webster, in discussing the bill for militia drafts, indulged in those threats of disunion, which at that time were commonly made by the New England members, Mr. Ingersoll vigorously replied, denouncing threats of this nature by minorities. It is hard to realize that this was the same Webster who in later years became the defender of the Constitution and the champion of Federal rights.

At the conclusion of this term in Congress, Mr. Ingersoll returned to the practice of his profession, which he pursued steadfastly for a quarter of a century. For fourteen years he acted as United States district attorney.

Chief Justice Sharswood, in a paper read before the American Philosophical Society, has described Mr. Ingersoll's practice at the bar and his characteristics as a lawyer. "His first case," he said, "in the Supreme Court of the United States, was in 1810, King v. Delaware Ins. Co. 6 Cranch, 71, 3 L. ed. 155,—an important insurance cause; and thence down to the period of his retiring from the bar, scarcely a volume of the reports of the decisions of the highest Federal tribunal is without contributions from his learning and ability. Subjects of mercantile and prize law largely engaged his attention; and the case of Evans v. Eaton, 3 Wheat. 454, 4 L. ed. 433, upon a very difficult and nice question arising under the patent laws of Congress, would, if it stood alone, be a lasting monument to his learning, ingenuity, and legal acumen. The reports of the Federal courts of this circuit, as well as of the supreme court of Pennsylvania, are replete with evidences of an extensive and important practice, sustained on his part by unwearied industry and patient research. Occasionally, too, his services were called for in the highest tribunals of our sister and neighbor states. But it was in the

Federal courts of this circuit, under the presidency of those distinguished jurists, Bushrod Washington, Henry Baldwin, Richard Peters, and Joseph Hopkinson, that his severest professional labors were undergone, and his richest rewards earned. . . . The pages of report books, however, furnish but scanty and unsatisfactory evidence of the professional career of a lawyer. It often happens that his most remarkable efforts, his most eloquent appeals, as well as his most able and learned arguments, live only in the memory of contemporaries who have had the good fortune to be present on the occasion which called them forth. Those only who have witnessed Mr. Ingersoll in the trial of an important cause, extending, as often happened, through several days,—his tact in so opening it as to produce a favorable impression on the jury, the admirable order and arrangement with which the testimony was brought forward, his skill in skirmishing with his antagonist on questions of evidence, and the earnest, faithful, and exhaustive summing up of the merits of his client's case, the humor, sarcasm, irony, and invective with which he assailed the positions of his adversary,—can have any adequate idea of Mr. Ingersoll's power as an advocate. The writer was present on an occasion when, at the conclusion of one of his most brilliant efforts, a crowded bar could not be restrained by the proprieties of the place from a momentary expression of admiration and applause."

In 1840 Mr. Ingersoll was returned to Congress, and remained a member of that body until 1848. He was one of the floor leaders on the Democratic side. He was great enough to recognize the necessity of extending our territorial limits, and advocated the annexation of Texas, even at the price of war with Mexico. He also engaged in a memorable series of debates with John Quincy Adams upon the question of slavery.

His biographer describes him as rather slight in person and of medium height. He was erect, and agile in all his movements. At eighty he might have passed for a man of fifty, since scarcely a hair had turned gray, nor had the infirmities of age beset him. He died May 14, 1862, of an inflammation of the lungs.

Charles Ingersoll, son of Charles Jared, studied law in the office of his celebrated uncle, Joseph R. Ingersoll, and was admitted to practise in September, 1826. While not as distinguished at the bar as his father or grandfather, this was doubtless due to his disinclination to give his undivided attention to the duties of his profession. He was an admiring and diligent student of the most profound juridical writers, and a master of the deep and curious learning of the law.

Charles Ingersoll retired from the bar at a comparatively early age, and devoted himself to literary studies and pursuits. In every department of polite letters, and in many tongues beside his own, he was an inquisitive and appreciative reader. In the field of political science he was a writer of admitted force and courage, with the happy gift of a vigorous and attractive style. Throughout his life he took a lively interest in legal, and especially constitutional, questions. His reading, although wide, was rendered at all times available by a most exact memory. He was admired as one of the most polished conversationalists of the day, usually illustrating what he had to say by historic allusions. He was a bold, outspoken man, yet kind and generous, who maintained, in the spirit of *noblesse oblige*, the traditions of his eminent ancestry. He died on August 13, 1882, while returning from Europe, and was buried in earth's greatest mausoleum,—the sea.

It is worthy of note that Edward Ingersoll, brother of Charles, was an eminent lawyer in Philadelphia in his day, and that the Ingersoll family is now ably represented at the Philadelphia bar by Charles Edward Ingersoll and William M. Meigs, grandsons of Charles Jared Ingersoll.

That a single family should produce so many succeeding generations of eminent ability and worth is unusual, but the fact ought not to surprise us. Should not each branch of the parent tree, nourished by the same generous sap, burst into equal profusion of blossom, and bear the same ripened fruit?

What Invasions of Privacy are Unlawful?

By Burdett A. Rich.

LESS than one in a million of unauthorized invasions of personal privacy is ever thought by anyone to be unlawful. Every moment of the day in every community publicity is given to the acts, affairs, and life of people whose consent is not given or asked. All the news of a neighborhood, whether it passes from mouth to mouth or appears in the newspapers, thrusts publicity upon the willing and the unwilling alike. In most cases no injury is caused, and no one makes objection. Yet, unwelcome or damaging publicity must often be endured without remedy. No matter how timid or shrinking a man or a woman may be, a truthful and respectful statement about his or her acts and affairs may usually be published to the entire world without creating any right of action. Facts very damaging may also be published without liability, if nothing is told but the truth. It appears, then, to be too clear for dispute that the mere invasion of one's privacy, however unauthorized the publicity may be, is not usually unlawful. Yet in recent years there has been much discussion of a so-called right of privacy. A considerable number of cases have arisen in which the courts have taken very different views of the question. In the resulting confusion, it may be well to consider some of the fundamental principles that relate to the subject.

Where is the line beyond which invasions of privacy become unlawful? Since publicity, however unauthorized and unwelcome, is undeniably lawful in an overwhelming majority of cases, what is the element that makes it unlawful in the exceptional case? The fact of injury seems to be one essential factor. Yet even that is not always sufficient. Telling the truth is deemed lawful, even though it hurts. It seems, therefore, that some wrong as well as injury must be done in order to make unauthorized publicity actionable. In respect to the whole range of libel and slander cases, these principles are too well settled to need discussion. Do they not apply to every other case of an alleged invasion of privacy? If they do not, by what other principle can the line be drawn between those cases of unauthorized publicity which are actionable and those which are not? None appears to have been laid down by any of the courts which have recognized the doctrine of a right of privacy, and no clear principle has yet been established by which it can be determined where such right begins or ends.

A study of the cases in which this doctrine of privacy has been considered shows a surprising lack of progress toward the development of any fundamental principles or clear outlines of the alleged right. In some cases the doctrine of a legal right of privacy—which has arisen chiefly in respect to unauthorized publication of portraits—is denied. Such was the case in Roberson v. Rochester Folding Box Co. 171 N. Y. 538, 59 L.R.A. 478, 89 Am. St. Rep. 828, 64 N. E. 442; Henry v. Cherry (R. I.) 24 L.R.A.(N.S.) —, 73 Atl. 97, and others. On the other hand, there are two cases which have declared broadly in favor of the doctrine. The first of these was Pavesich v. New England L. Ins. Co. 122 Ga. 190, 69 L.R.A. 101, 106 Am. St. Rep. 104, 50 S. E. 68, 2 A. & E. Ann. Cas. 561. The other is that of Foster-Milburn Co. v. Chinn (Ky.) — L.R.A.(N.S.) —, 120 S. W. 364. In both these cases the facts were such as to sustain a right of action for libel. That is significant. The publication being libelous, a declaration that it was an invasion of privacy might be

deemed unnecessary. If, however, that declaration is taken to be an authoritative one as to a law of privacy, it is to be interpreted in the light of the facts involved. So interpreted, it does not carry the law of privacy beyond the range of the well-established law of libel. Other cases also, like that of Peck v. Tribune Co. 214 U. S. 185, 53 L. ed. 960, 29 Sup. Ct. Rep. 554, have given relief against publications of portraits in connection with false statements of fact which were deemed libelous. But these do not necessarily involve any question of a law of privacy as distinguished from the law of defamation. In the case of Edison v. Edison Polyform Mfg. Co. (N. J. Ch.) 67 Atl. 392, an injunction was granted against the publication of the name and portrait of Edison with a false certificate that a certain medicine was made according to Edison's formula. This decision, while discussing the law of privacy, was based substantially on the proposition that Edison's property rights were injured by the publication. The net result of comparing all the cases on this subject is to show that no remedy has yet been given by law for any invasion of what may be called a right of privacy, unless such invasion is deemed injurious either to reputation or to a property right. The courts have not yet given a remedy in any case that does not fall within one of these classes. Reasoning from principle, they can hardly be expected to do so.

There is an irrepressible feeling that an outrage on a person's rights must have a remedy. Yet the maxim of centuries, that where there is a wrong there is a remedy, has often proved false. Few things are more insolent than the wanton and brutal publication for advertising purposes of the portrait of one who has not consented. The case is peculiarly aggravated when a woman's portrait is thus exploited. It is a credit to humanity that every right-minded judge must desire to find some way of granting justice to the person wronged. Yet the declaration of a law of privacy as the basis of such remedy seems thus far too vague and uncertain for acceptance. On the other hand, well-established principles of the law respecting libel and property rights can furnish remedies for most, if not all, of the wrongs of this kind.

The law of libel is broad enough to cover most wrongful uses of portraits for advertising. In the case of Foster-Milburn Co. v. Chinn, above cited as supporting the doctrine of a right of privacy, the court approves the statement that, if a publication about a person "tends to reduce his character or reputation in the estimation of his friends or acquaintances or the public," or "tends to deprive him of the favor and esteem of his friends or acquaintances or the public, or tends to render him odious, ridiculous, or contemptible in the estimation of his friends or acquaintances or the public," —it is *per se* actionable libel. Such a statement, liberally construed, is broad enough to cover at least most of the cases of wrongful publications, including the publication of portraits. If the publication of a portrait is such that the person represented naturally feels humiliated, and ordinary men or women in the same situation would feel so, it comes within the fair interpretation of the law of libel, as quoted above. The fact that the portrait is a good one merely aggravates the case, because it is the more certain to be recognized. No woman of ordinary refinement would fail to be humiliated by the unauthorized publication of her portrait by strangers for the advertisement of their merchandise. No judge will do violence to legal principles, any more than to his manhood, if he recognizes this fact of common knowledge and therefore decides that this inevitable humiliation which every woman must feel, knowing that such a publication will be thought derogatory to her, is sufficient to make it defamatory. On this point a suggestion is made by the annotator of the case of Henry v. Cherry, in 24 L.R.A. (N.S.) —, that the publication of a portrait may be reasonably presumed by the public to have been made with the consent of the person depicted, and, if that is not true it involves a false representation, which constitutes a factor in the law of libel.

The question of a property right in the use of one's portrait for advertising purposes has not been passed upon in most

of the so-called privacy cases. But in the Edison Case above cited, the court explicitly declared that Mr. Edison had a property right in the use of his name and his portrait for advertising purposes, notwithstanding the fact that he was not making such use of them himself. On this point, the wrongdoer who makes unauthorized publication of another's portrait for advertising purposes is estopped to deny that the right to use it is property. He uses it for the express purpose of making it profitable in his business. Having done so, he cannot deny that it has a property value. As Case and Comment said in July, 1902: "Whatever value there may be either in a person's portrait or name for trade purposes must certainly be a property right. Courts protect the name, and on exactly the same principles must protect the portrait. The fact that there is a value in a portrait for advertising is the only reason for perpetrating the nefarious outrage of stealing it for such use. When recognized as having a property value, it would be preposterous to say that it does not belong to the person whom the name or the portrait represents." It would be no less preposterous to deny that one who insolently appropriates another's portrait for its property value in advertising is estopped to say that it has no such value. The choice or the adequacy of the remedies in this class of cases is not within the intended scope of this article. But space may be taken to suggest that, if the existence of a property right in one's portrait when used for advertising purposes be established, the most effective remedy in many cases may be in a suit for an injunction, with a demand for an accounting of profits made by the wrongful use of the portrait. The equitable principle declared in the early English cases, such as Colburn v. Simms, 2 Hare, 560, whereby, as the nearest approximation to justice which the court can make, all the profits which the wrongdoer has made by his piracy are given to the party wronged, has become familiar in the wrongful infringements of another's property rights, as in the case of patents and copyrights. Plaintiff's nonuse of his rights is no bar to his recovery of defendant's profits in such cases. Crosby Steam Gage & Valve Co. v. Consolidated Safety Valve Co. 141 U. S. 441, 35 L. ed. 809, 12 Sup. Ct. Rep. 49. This equitable remedy is unquestionably applicable to the wrongful use of another's portrait for advertising purposes, if it be established that one has a property right in his own portrait for such use. The inadequacy of an ordinary action for damages in such cases gives importance to this accounting for profits, if it can be invoked.

The conclusion of the matter seems to be fairly stated as follows: If invasions of privacy are ever unlawful, they are so only as they are exceptions; because, in the overwhelming majority of cases, the publicity that is thrust upon people is concededly without any possible remedy. Publicity to be actionable must usually be both injurious and wrongful. Most courts, up to the present time, have refused to accept the doctrine of a law of privacy. Those that have accepted it have done so in cases in which the objectionable publicity was so wrongful and injurious as to constitute a libel, except in the Edison Case, in which the unauthorized use of Edison's name and portrait was combined with a false certificate as to his connection with the manufacture of a medicinal preparation. Here the court based the remedy on his rights of property. No case that has accepted the vague and shadowy doctrine of a law of privacy has given any definition to it, or pointed out any clear boundaries between the innumerable instances when unauthorized publicity is lawful and the extraordinary exceptions where it is unlawful. As the cases actually held unlawful thus far can easily be sustained on the law of libel or of property rights, it seems unnecessary to invoke a doctrine of privacy for them. Until something more clear and definite is declared by the courts to define the boundaries and limits of a so-called right of privacy, it seems proper to conclude that such right does not extend beyond the protection of one's reputation and standing, given by a fair and liberal interpretation of the law of defamation, and of those rights which are within the established principles of the law of property.

Law in the Philippines.

By Hon. James F. Tracey, of the Albany Bar.

From a paper presented at the annual meeting of the New York State Bar Association by Mr. Tracey, who was formerly Associate Justice of the Supreme Court of the Philippine Islands.

THE instruction of President McKinley to the Taft Commission, which is prized by the Filipino as the first charter of his liberties, contains the following judiciary article:

"The main body of the laws which regulate the rights and obligations of the people should be maintained with as little interference as possible. The changes made should be mainly in procedure and in the criminal laws to secure speedy and impartial trials, and at the same time effective administration and respect for individual rights." This general direction was interpreted alike by the Commission and the people as a guaranty of two things:

First, the preservation as their common law of the Spanish law of the Islands, both civil and criminal; and second, the simplification of procedure in both branches, and especially the expedition of criminal trials.

In facing as its assigned task the upbuilding of an oriental people on western republican lines, the Philippine administration in many instances found at its hand only raw material. So it was in the matter of political development, so also in primary education, in both of which the Commission's work was to prove constructive, almost creative. Not so, however, in the structure of the law. The Spaniard had founded in the Islands the legal system prevailing throughout Continental Europe, based upon the Roman law modified by royal ordinances from time to time gathered into Recopilaciones or Revisions, the earliest of which, the Fuero Juzgo, dates from the seventh century, and the most frequent quoted, the Seven Partidas, from the middle of the thirteenth. Supplemental to these Peninsular Compilations, the Leyes de las Indias, or Colonial laws, formed one of the most painstaking and humane codes ever promulgated, dealing generously with the relations of the white man to the native, restraining and punishing abuse of power by the one, while solicitously protecting the weakness of the other. That it was efficient, and not merely declaratory, is plain from the chronic disturbances recorded in the history of the Archipelago excited by its more or less rigorous enforcement against the dominant race, as well as from the temporal well-being of the politically subject people. Although not enfranchised or generally educated, on the other hand, they had not been exterminated like our North American Indians, nor debauched with liquor, but were protected in their home life, their persons, and their property. All these ancient statutes invite the research of the modern lawyer, each volume of current Philippine reports containing citations to them.

In the eighties of the nineteenth century, the antecedent civil and criminal laws and the law merchant were replaced by Civil, Penal, and Commercial Codes, these three, except in a few particulars, being identical with the Codes of Spain, and forming, at the time of American occupation, the substantive law of the Archipelago.

The Civil Code, following closely the French model, possesses the logical development, the verbal precision, and the complete grouping of particulars under their appropriate generalization, characteristic of the Latin mind, that have led to the acceptance of the Code Napoleon by the majority of civilized peoples as

the great exemplar of their legislation and the most perfect of the formulated rules of human law. It is my experience that among qualified lawyers in the Islands, who have practised under both dispensations, the preference is for the Spanish Civil Code, rather than our own common law modified by random statutes or by loose codification. Personally, there now occurs to me only one item of moment in which it suffers unquestionably by the contrast, and that is the logical but oppressive enforcement of the *pacto de retroventa* (the French *pacte de rachat*), a self-acting foreclosure of redemption of realty conveyed to secure a debt, operating automatically on the date of maturity without action. This form of security is productive of sore distress, and it is one of the crowning glories of our jurisprudence, ever on guard against oppression, that, in spite of logic and explicit contract, the court of chancery persisted in enforcing an equity of redemption. From my own observation of both systems, I am satisfied that English property law has left us no legacy more precious than this.

Drafted with less skill than the Civil Code, the Code of Commerce regulates the dealings of merchants according to the customs of Continental Europe, somewhat to the confusion of American traders in the matters of their agents and their promissory notes.

More discussed than either of the others, the Penal Code has up to this time survived assaults. In no respect does it differ more radically from our criminal law than in its system of sentences, stated and adjusted by statute and subject to increase on appeal. To each offense is allotted its grade of penalty, and the business of the court is to refer the crime to the proper grade to which, within narrow limits, the fitting punishment is assigned in the law, and shown on a statutory table. This, again, may be raised or lowered in the graded scale by reason of "circumstances,"—either aggravating, such as darkness of night, remoteness from habitations, breaking into inclosures, treachery and abuse of confidence; or else mitigating, such as infancy, provocation, protection of property or of persons not amounting to self-defense, and the like. Take one instance: A policeman charged with causing the death of a prisoner was, by the trial judge, held guilty of a battery only, and punished with six months confinement and $50 indemnity. He unwisely appealed, and the appellate court, considering his responsibility for the homicide proved, applied the penalty specified for that crime, modified by one mitigating circumstance, unforeseen consequences of his act, and by two aggravations, nocturnity and abuse of superior power, thus increasing his sentence to fourteen years and some months imprisonment and $250 indemnity. This judgment of conviction was affirmed by the Supreme Court of the United States. United States v. Trono, 3 Philippine, 213, 199 U. S. 521, 50 L. ed. 292, 26 Sup. Ct. Rep. 121, 7 A. & E. Ann. Cas. 773. Had there been no mitigation, the term might have extended to twenty years, and had there been no aggravation, it might have been reduced to twelve.

More than once the court of second instance has been called upon to impose the death penalty upon a rash appellant from a judgment of imprisonment.

The prejudice with which an American starts on the administration of this artificial scheme somewhat wears away with observation and use. It works well, and was of inestimable value under Spanish Colonial rule, because removing from the bench temptation to exercise tyrannical power through arbitrary sentences. The criminal law of Spain does not limit itself to the punishment of the guilty, but, proceeding one step further, provides compensation for the injured. The judgment of condemnation not only imposes a penalty of death, imprisonment, banishment, or fine, but awards as well indemnity for the criminal act to the sufferer or his family, enforced by "subsidiary imprisonment" in case of failure to pay,—that is, additional confinement for a proportional and limited term. This device proves as beneficent in practice as it is excellent in theory.

Such was the common law of the Philippines which the Commissioners were instructed to maintain "with as little in-

terference as possible." . . . A Code of Civil Procedure was passed, compiled from our American state systems, ambitiously seeking to combine the merits of all, rather than to secure the certainty of any one of them, and here and there trespassing, as they often do, on the substantive law, in which it has been charged with working unforeseen changes, so numerous as to call for a commentary within a year. The marvel is not that such changes were many, but rather that they were not more. It is due to the great practical ability and sound sense of the members of the Commission that, legislating under these conditions, they wrought no fatal damage to the established civil law. Their work achieved its main purpose in providing the civil courts with a simple and rapid procedure.

The criminal procedure is American, but is military in origin, being embraced in General Order No. 58, a succinct ordinance so excellent that it has not been superseded since its enactment in 1900. Nor has it proved difficult of application. Framed by officers of the United States Army, assisted by the advice of Filipino jurists, it constitutes a notable monument to the practical skill of the army lawyer.

The judicial organization is on the American model. Justices of the peace have jurisdiction criminally of offenses involving not more than six months' imprisonment nor fines of over $100, and civilly of money demands of not more than $300. All other ordinary cases, including probate matters, go to the courts of first instance, which may entertain civil demands of over $100. Of these there are sixteen distributed through the provinces presided over by a judiciary more than half Filipino. Conducted with expedition, no little learning, and unquestioned integrity, they compare favorably with like courts elsewhere. Other bodies of original jurisdiction have been constituted,—among them land courts for the registration of titles on the Torrens principle, now doing a steadily growing business. An interesting experiment was tried in a court of customs appeal taking cognizance of all customs and kindred subjects, in which it was vested with exclusive and final jurisdiction. It was organized in 1902 with three judges, one of them the minister of justice, a second selected from the supreme court, and a third specially appointed. In 1903 there were substituted in their stead two judges only of first instance, and thereafter, languishing for lack of legal fodder from the local customs, it was abolished in 1905.

From the trial courts of record appeal lies to the supreme court, consisting of seven justices, appointed for an unlimited term by the President and confirmed by the Senate,—three, including the chief justice, having been Filipinos ever since its organization and four Americans. It is deemed important, even by the Filipinos of a conservative term, that, so long as American influences prevail in the government and American institutions continue to develop, this balance of power be preserved. This opinion does not imply distrust of the native justices; on the contrary, I was taken roundly to task by the American press of Manila for having, before leaving that city, publicly expressed the opinion that in respect of scholarship and of law learning, the strongest end of this bench was the native end. The three Filipinos are all men of keen intellect and liberal education, typifying, in an altogether exceptional way, the highest development of their race.—Chief Justice Arellano being a delightful companion as well as a scholar of European reputation. The court, which is well up with its business, runs a heavy calendar, made up on the first of each month from July to April, 701 causes having been reported as disposed of during the last judicial year, all but about 100 by final decision. Its functions are purely appellate, except that under a special statute the property controversies between the government, the municipalities, and the church were tried before it, testimony being taken on commission, and also that the justices may grant what are known to us as state writs. . . . Viewed in its succession, it may be considered the oldest judicial body under the American flag, for it inherited not only the legal jurisdic-

tion, but the records and the pending cases of the Real Audiencia, which was created by royal order in 1584.

From this court, which is, in other respects, one of last instance, recourse lies to the United States Supreme Court in cases involving the Constitution, treaties, congressional acts, or the privileges of the United States, or a subject-matter of value greater than $25,000. The privilege of resort to the great tribunal at Washington, in cases of national or international importance is of obvious and inestimable worth, and may ultimately determine the fate of the whole Philippine venture. . . . As a whole, the interesting experiment of the amalgamation of the two systems, resulting in a procedure mainly American and a substantive law mainly Spanish, has proved a gratifying success. The complaint against the old courts was for their tardiness, which grew chiefly out of two incidents of Spanish practice,—the one, interminable appeals on interlocutory and collateral questions, and the other, the privilege accorded litigants of challenging the judge, and even successive judges, almost *ad infinitum*, to the favor, so to speak. In consequence, the new Code of Procedure cuts off interlocutory appeals, and happily the judges are above reasonable suspicion, so that litigants are becoming reconciled to the loss of the challenge. The feature of the American system which is valued most highly is the public examination and cross-examination of witnesses. There being no jury trials, such examinations are not suffered to run to prolixity as with us, but are usually remarkable for their brevity and point. Owing also, in part, though not wholly, to the absence of a jury, justice is administered with expedition, and the appellate courts, as corrective of the liability to error on the part of a single trial judge, are vested with power to review the facts as well as the law, and also to modify judgments without reversal, one consequence being that a case is rarely tried twice. In criminal prosecutions the accused may also have two assessors sitting with the magistrate at the trial, who are free to disagree with him and report separately from him. The day is distant when the education of the people will be so far advanced as to justify the introduction of juries, and it admits of serious doubt whether the jury would ever prove other than a perilous instrument of justice in a mixed community made up of so many diverse peoples peculiarly a prey to racial prejudices and jealousies.

The many tongues in use among these peoples raised the question as to which should serve as the language of the reorganized courts. Provisionally it was enacted that either Spanish or English could be used until a period when English might be expected to have come into the common knowledge of the people, which was fixed at the year 1906. Before that time was reached, however, it was realized that actual conditions would render such a radical change a hindrance to business and a hardship to the living generation, so that the term for a dual language was extended to 1913. The anglicization of the profession proceeds but slowly. During the three years of my service on the supreme court of the Islands,—from 1905 to 1908,—the use of Spanish in the court increased, while, relatively, the use of English decreased, owing to the acquirement of Spanish by most of the American lawyers, and a resultant disuse of English by the native bar. It is doubtful if the limit of the year 1913 will not have to be further extended, if not suppressed for an indefinite term. . . . The lawyers number about 1000, and have an organization known as the Bar Association of the Philippines, with headquarters at Manila and branches in the chief provincial towns. The members pay dues, 40 per cent of which go to running expenses, including salaries, and 60 per cent to a protection fund for the relief of the families of destitute or deceased associates. Filipinos in the profession outnumber the Americans, who, however, conduct much of the heavy litigation, especially that of home corporations. Immediately after the change of sovereignty, the call for lawyers became so urgent, owing to depletion by war, and by the exitus of the Spaniards, that

applicants were admitted with great freedom. More recently requirements both of preparatory study and of examination have been enacted by a rule of the supreme court quite as strict as in the more exacting states of the Union. The bar, active and intelligent, transacts business with commendable despatch. In the appellate court a majority of the cases are submitted on printed briefs, and a verbose argument is a rarity.

The final test of the merit of this judicial system must be the public judgment upon it. One of the most distinguished of the Filipinos remarked to me last year: "If you Americans were to go out of the Islands tomorrow, there are two of your institutions that my people would insist upon retaining under any government,—the one, some form of public schools, and the other, the courts as at present constituted."

Ignorance of the Law Excuses No One.

By John B. Green

LAYMEN, even editors of daily newspapers who have taken all learning for their province, as well as judges and lawyers, are sometimes mistaken as to the law. Their mistakes, whether grave or amusing, unlike professional errors, usually are harmless. These may be and generally are ignored by the *cognocenti*. When, however, a misstatement of law is made in a daily newspaper, and several times repeated, and is of a sort to mislead uninformed readers who accept it as authoritative into thinking themselves aggrieved, it ought not to be permitted to go uncorrected.

The state of New York has for many years owned an extensive tract of valuable land with several substantial buildings upon it, in the city of Rochester, which it formerly used as an industrial reform prison school for juvenile criminals, but which it has recently vacated for healthier and more commodious quarters in the country. A proposal of the superintendent of prisons to use the property as an overflow prison for adult criminals roused the citizens of Rochester to protest so vigorously that the plan was laid aside, perhaps permanently; but, the menace to the comfort and peace of the city remaining, negotiations have been entered into looking to the transfer of the property from the state to the city. A leading local newspaper, commenting editorially recently upon the visit of the state fiscal officer to inspect the property for the purpose of determining the terms upon which it would be fair for the state to transfer it, referred to a report that that officer favored greater concessions from the city than had theretofore been offered, and then said: "The state of New York is not treating the city of Rochester generously or decently in obstructing its efforts to secure on fair terms the property under consideration. The state already owes this city a large amount of money for local improvements and back taxes which Rochester has in vain tried to collect." Now it may be said positively, without the least qualification and with the greatest emphasis, that neither legally nor equitably does the state owe the city a single penny for taxes upon this property. And it never did. If

there is any doctrine of the law established beyond all controversy and unanimously accepted by jurists as sound, it is that the property of a sovereign state devoted to a governmental purpose is altogether beyond the reach of taxation by any subordinate governmental agency. Public property is exempt from taxation on general principles. West Hartford v. Water Comrs. 44 Conn. 360. No statute is required to give it immunity. Schuylkill County Poor Directors v. North Manheim Twp. 42 Pa. 25. Independently of constitutional or statutory provisions, statutes imposing taxes do not reach public property. People v. Doe G. 1,034, 36 Cal. 220; Ryan v. Gallatin County, 14 Ill. 78; Augusta v. Dunbar, 50 Ga. 387; Buckley v. Osborn, 8 Ohio, 180; Nashville v. Bank of Tennessee, 1 Swan, 269. Even when a constitution requires in terms that all property in the state be taxed, it means only all private property, and does not embrace public property. People v. McCreery, 34 Cal. 432. No matter how general the enumeration of property subject to taxation, property held by the state and by all its municipalities for governmental purposes is intended to be excluded, and in administering the law it always is excluded. Louisville v. Com. 1 Duv. 295, 85 Am. Dec. 624; People ex rel. Doyle v. Austin, 47 Cal. 353; Worcester County v. Worcester, 116 Mass. 193, 17 Am. Rep. 159; Wayland v. Middlesex County, 4 Gray, 500; Gibson v. Howe, 37 Iowa, 168; State, Water Comrs., Prosecutors, v. Gaffney, 34 N. J. L. 133. This exemption from taxation extends to all state and national property, whether it is or is not used as a means or instrumentality of the government. People ex rel. McCrea v. United States, 93 Ill. 38, 34 Am. Rep. 155; McGoon v. Scales, 9 Wall. 23, 19 L. ed. 545; Kansas P. R. Co. v. Prescott, 16 Wall. 603, 21 L. ed. 373. The particular error which has furnished a text for this article would appear to have been inexcusable in a well informed newspaper writer in the city of Rochester. It is no great while ago since the stated principles were clearly set forth in the litigation between the city of Rochester and the town of Rush, in which the city was held to be exempt from taxation upon its water works in the town (Rochester v. Rush, 80 N. Y. 302),—a decision that gave rise to legislation designed to make municipal corporations owning property beyond their own limits contribute to the local budget. Even then Rochester reluctantly met its just obligations and only after a legal contest. Rochester v. Coe, 25 App. Div. 300, 49 N. Y. Supp. 502. The statement quoted is not an isolated one. It has been repeated several times by more than one newspaper, and it is mischievous. It is likely to retard rather than advance the very proper and commendable plans to vest the property it relates to in the city. The state has really no use for it, and the city can make great use of it for the public welfare. It is to be wished that we may hear no more about the state owing back taxes to the city.

The Editor's Comments

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Motion for New Trial in Homicide Case

WHEN a prisoner indicted for murder in the first degree is convicted of a lesser degree of homicide, what is the proper course for his counsel to pursue? Obviously, if the conviction is for a grade of manslaughter, prudence would dictate advising acquiescence in the verdict, upon the ground that the prisoner cannot reasonable expect a more favorable result on another trial. But suppose the verdict is murder in the second degree? It must be a rare case in which the prisoner can be convinced that he has been so lucky to escape death that he ought not to take the chances of a new trial. It must be almost as rare a case for the prisoner's counsel to be so convinced as will warrant him in accepting without question such a verdict, for it must not be forgotten that the prosecution failed to convince the jury of the guilt of the prisoner of murder in the first degree, and that virtually all experience teaches that a second trial scarcely ever results in a conviction, where the first trial failed to reach one. What, then, is the professional duty of counsel for the defense in the case stated? We believe lawyers generally will agree that, upon the coming in of such a verdict as has been mentioned, counsel in the overwhelming number of cases would be derelict in duty and unfaithful to his trust if he failed to move for a new trial. The lay press, commenting upon a recent case of this character in the city of New York, has spoken of counsel who followed the usual course and did the expected thing as having "overreached" himself and been disappointed by the sudden granting of his "perfunctory" motion for a new trial. But we submit in all candor that the counsel is open to no just criticism.

Publicity in Divorce Suits

"There is a lust in man no power can tame,
Of loudly publishing his neighbor's shame.
On eagles' wings immortal slanders fly,
While virtuous actions are but born to die."

WE QUOTE from memory, and do not recall the author of the above lines, but they seem an appropriate text from which to sermonize upon the topic of divorces. If any good reason can be adduced in favor of the publication of testimony in divorce suits, it has not been brought to our attention as yet. The provision of law in the state of New York by which a justice of the supreme court is empowered, upon granting a decree of divorce, to order the testimony upon which it is founded to be sealed against all but the parties and their counsel and public offi-

cers, is a comparatively recent enactment, and, we do not hesitate to say, notwithstanding the attacks being made upon it, a wise and eminently proper one. It is as distinct an advance toward a higher civilization as was the abolition of public executions, and it rests upon the same beneficent grounds. The carting of prisoners condemned to death through the public highways, and hanging them in the presence of a mob, was brutalizing to the people. The publication of the details of testimony in divorce cases is demoralizing. The demand for its publicity can only come from the prurient minded and newspapers which pander for profit to their depraved taste. The sole news in respect of divorces which the public needs is the fact that a decree has been granted or refused after an upright judge in the discharge of his judicial duty has examined the testimony and found it sufficient to warrant his conclusion. In the name of decency, keep such matters out of sight. It is interesting to note that this subject is being agitated in England. A royal commission is considering the revision of the divorce laws. At a recent hearing, great opposition was manifested to any provision as to publicity. All the witnesses before the commission favored at least partial restriction of publication.

Lawyers in the Legislature

ACCORDING to reports in the newspapers, a New York legislator has proposed a statute making it a felony for any senator or assemblyman to accept money for his services, past or prospective, from any person or corporation interested in legislation. The bill introduced is not at hand, but if it is an intelligent effort, well considered, to restrict and punish the recognized evil of law-making or prevention for the benefit of persons, natural or artificial, by their paid attorneys, inimical to the public welfare, it is less sweeping in its provisions and more carefully drawn than the newspaper accounts imply. Everyone will concede that the passage, repeal, or prevention of laws for the general good ought not to be intrusted to the lawyers employed by interests to be curbed or regulated for the benefit of the community as a whole, and that any lawyer elected to the legislature, who betrays his constituency for his clients, should be visited with condign punishment. Every thoughtful citizen, however, desires lawyers to serve the state in the legislature. He knows that throughout our history the highest, most disinterested, and permanent service has been rendered to the people by lawyers. We do not believe the intelligent citizen wishes to exclude lawyers from the legislature, nor even to keep out those whose personal fortunes do not permit them to serve the state for the salaries paid,—there are not enough left if these be excluded to be useful. Nor do we intend to argue that therefore the salary of a legislator should be raised; it may be that it is too low anyway, but it cannot well be made high enough, to afford a competent lawyer sufficient income to exist in idleness three fourths of the year. We must and ought to have the services of sound and honorable lawyers in the legislature, and they must and ought to support themselves by their professional work. To be most useful to the public as a legislator, a lawyer should be in active practice. What then? Simply this; it lies with constituencies to choose proper, honorable, and able representatives, men who know their duties and fearlessly discharge them. We firmly believe the lawyers with the loftiest sense of honor and of the highest ideals, no matter how diverse their political views, still are largely in the majority in the profession, and, if wanted, are at the people's command. Every community numbers many such men among its members, and every community generally is content to be represented by others,—usually by a man only nominally a lawyer, who makes his living and gets rich by politics alone. Our need is a higher sense of civic duty and less partisanship in the body of voters.

Preserving Testimony by Phonograph

THE following report comes from Boston, Massachusetts: Attorneys for the Glover brothers, who are seeking to break the will of their brother, Clarence L. Glover, who was shot and killed in his laundry at Waltham several months ago, have preserved the testimony of one of the witnesses on a phonograph record, for future use in case the latter dies and it becomes necessary to repeat what he said.

In Boyne City, G. & A. R. Co. v. Anderson, 146 Mich. 328, 109 N. W. 429, 117 Am. St. Rep. 642, 10 A. & E. Ann. Cas. 283, 8 L.R.A.(N.S.) 306, it was held that a phonograph might be operated before a jury to reproduce sounds incident to the operation of railroad trains; but the idea that the testimony of a witness may be perpetuated on a phonographic record for future use is going quite beyond anything yet tried in this line. There would appear to be nothing to be gained by having a person talk into a phonograph for this purpose, as there would be by using this instrument to reproduce sounds which cannot be imitated by the human voice; and, besides, the proposition of the Boston attorneys seems to be open to a fatal objection. At common law, as is well known, testimony could not be perpetuated for future use. It was only by an action or proceeding in equity that this was done. Afterwards, in most jurisdictions, the simpler statutory proceeding took the place of the more cumbersome equity practice. Under the new procedure it is only upon a compliance with the statutory requirements of petition, notice, hearing before a referee, etc., that depositions taken for future use are admissible. Talking before a phonograph would seem not to be within either the old equity procedure or the present statutory requirements.

How to Keep in Touch with the Law

WHEN a lawyer has determined that it is necessary for him to keep in touch with the current legal thought of the nation, and that he cannot expect great success if he confines his knowledge of what the courts are saying and doing to what he can learn from the decisions rendered by the courts of his own state, he must next consider the sources of this information. It is not the part of wisdom to choose the first tools offered, regardless of their adaptation to his individual needs. The wisdom of the farmer who would purchase a self-binder for use on hills too steep for even a mowing machine would equal that of the lawyer who places on his shelves books which can be only slightly, if at all, serviceable in his practice. The lawyer who investigates the means of keeping in touch with the constant amplification and modification of the rules of law finds that the sources of this information are limited to four principal classes,—text-books, encyclopædias, and series of reports, either of selected cases, or of all the decisions which are handed down by the various courts. Of these, the text-book and the encyclopædia are not sufficient because they do not purport to keep in touch with the current law, but merely contain a record of the past, and because they are composed of the conclusions and deductions of the authors, rather than of the utterances of the judges themselves. Furthermore, they are little more than amplifications of the rules which the attorney must learn while pursuing the studies which culminate in his admission to the bar. Such works have some value for reference, or to refresh the memory, but they can never be relied on as repositories of the growing law. Therefore the only practical question is whether to choose

the select-case series, or the all-case series. The argument in favor of the former is that it takes less space, costs less, and is more convenient to use. That in favor of the latter is that its owner has at hand everything which the courts have said, should he ever want to use it. Theoretically, this argument has weight, but practically it is of much the same quality as that of the over-careful housewife who fills her attic with the cast-off rubbish from her living rooms, against the time of need.

Every man who takes the trouble to analyze the reports which come from even his own court of last resort soon discovers that there are many cases which will never be of use to him; and actual experience shows many cases which have never been cited or referred to since they were published. If the analysis is extended to the decisions of the courts of sister states, the class of unusable cases increases very rapidly. There are decisions construing and applying provisions of local statutes and municipal ordinances and charters, which are limited so entirely to local conditions that they can never be of value to localities where conditions are different. There are decisions in which well-known principles are applied to facts so peculiar that a similar case will rarely, if ever, arise again. There are decisions on local practice. There are criminal cases in which the general question is whether or not the facts support the conviction. There are innumerable decisions merely threshing over old straw upon which every lawyer may find plenty of authority in his own reports. If his court of last resort has settled the question, he is not interested in piling up authority to the same effect from other states. A lawyer in Massachusetts does not need a decision which applies the civil law of Louisiana, the Colorado constitutional provision governing water rights, or the Mexican land law of the south-west. He will never look at such decisions if he puts them on his shelves, and would waste his time if he did so. He cannot afford them shelf room, and wastes all money which he puts into them. This is self-evident, and is very largely responsible for the statement, so often heard, that the lawyer wants nothing outside his own state reports.

There is, however, a residuum of cases, after the chaff is all winnowed out, which are very valuable. They become the leading cases which fix the law in their respective states, and become the basis of argument for the decisions of other states. These the lawyer can hardly afford to be without, even if they are not decided by his own court. The problem is, how to get them and leave the others out. The select-case system is almost an ideal solution of this problem. By this system the useless cases can all be eliminated, and only those of general value published. The cases which deal with the newest judicial problems, those in which the judges take the time, and expend the labor to gather up and restate the rules applicable to some particular branch of the law, and those which are likely to be of use to the general practitioner, can be collected and published. By this means, he gets the wheat, and the chaff is discarded for him. He economizes space, saves money, and at the same time accomplishes what he attempted to do,—keep in touch with the best judicial thought. And when, in addition to this, he is furnished notes which, in the modern reports, practically exhaust the law on the subject dealt with in the cases reported, nothing desirable would seem to be left unprovided. One who is not satisfied to learn his law from the decision in the case which he takes into court can, at slight expense, have the cream of the current law placed on his shelves, where it is constantly available.

An Acknowledgment

In our March issue we failed to give proper credit to Mr. W. J. Campbell, of Philadelphia, who furnished us with the steel engraving of Chancellor Kent, the beauties of which our reproduction but suggested. Mr. Campbell's announcement appears in the advertising section of this number.

AMONG THE NEW DECISIONS

Right of action for destruction of property. Whether the owner of insured property which has been destroyed by another has a right of action to recover for the loss sustained, regardless of whether he has been reimbursed for his loss by the insurer, has been discussed in a considerable number of cases which are collected in a note to the recent Kentucky case of Illinois C. R. Co. v. Hicklin, 23 L.R.A.(N.S.) 870, holding that a railroad company which has negligently destroyed insured property through fire set out by its locomotive cannot defeat an action brought by the owner, who has been compensated by the insurance company, to recover the value of the property, on the theory that, under a statute requiring every action to be prosecuted in the name of the real party in interest, the action should have been prosecuted by the insurer. The decision is based on the ground that the owner in possession of the legal title, is the real party in interest, and that payment to him would be a complete defense to any further action for the same cause. There are numerous decisions which uphold the right of the owner of insured property which has been negligently destroyed and for which compensation has been made by the insurer to maintain suit against the wrongdoer, in the absence of statutes requiring actions to be brought by the real party in interest. In jurisdictions where such statutes exist, however, it has been determined that suit should be brought by the insurer if it has paid for the loss in full, and by the owner and insurer jointly if only a part has been paid. The doctrine laid down in the Hicklin Case would seem to present the sounder view.

Termination of agency by dissolution of partnership acting as agent. The rule that the dissolution of a partnership authorized to act as an agent will revoke the agency is applied in the recent North Dakota case of Larson v. Newman, 121 N. W. 202 holding that written authority conferred upon a firm to sell a piece of land on terms stated in the contract of agency is terminated upon the dissolution of the partnership, and that one of the partners has no further power under the contract. The decisions upon this question are discussed in a note accompanying the Larson Case in 23 L.R.A.(N.S.) 849, and disclose the applicability of the rule, although the dissolution may have been brought about by the death of a partner. But it seems that the mere change of a firm's name will not annul its authority as agent.

Power of health authorities to forbid use of polluted water supply. The fundamental principle of government, that the state may require the individual to use his property so that the public health and safety shall be best conserved, and that interference with personal liberty is excusable when reasonably necessary for the protection of the public health, provided the means used and the extent of the interference are reasonably necessary to accomplish that purpose, is applied in the recent Vermont case of State Board of Health v. St. Johnsbury, 73 Atl. 581, holding that the constitutional right of a citizen to personal liberty is not infringed by an order of the state board of health forbidding him to use for drinking purposes a polluted water supply. In this case, however, the board of health was acting under expressly delegated authority, in the absence of which it would seem that the use of a polluted water supply could not be forbidden or regulated by a board of health or other local authorities, but would, because of constitutional objections, have to be regulated by the state directly. The few cases in which the question has been discussed are collected in a note which accompanies the St. Johnsbury Case, in 23 L.R.A.(N.S.) 766.

Curtesy in land conveyed by husband to wife. Whether a man by conveying property to his wife deprives himself of all rights of curtesy therein has been frequently discussed by the courts, which have been divided in opinion on the question. The recent West Virginia case of Depue v. Miller, 64 S. E. 740, holding that a husband has an estate by the curtesy, after the death of his wife, in lands which he had voluntarily settled upon her, if he did not, in express terms or by plain implication, relinquish such right in the instrument of conveyance, is in harmony with the more recent decisions on the subject, which are set out in a note accompanying the Depue Case in 23 L.R.A.(N.S.) 775. The earlier cases are collected in a note in 69 L.R.A. 353.

Husband's right to sue wife for personal tort. That a husband cannot maintain an action against his wife for injuries inflicted upon him by her act in deliberately wounding him with a gun, either at common law or under statutes giving her the right to separate property and permitting them to contract with each other, is held in the recent California case of Peters v. Peters, 103 Pac. 219, which further decides that a mere statutory provision that, when the action is between a married woman and her husband, she may sue and be sued alone, does not give him a right to sue her for a personal tort inflicted upon him by her. This adjudication is in harmony with the only prior decision that has considered the question, as appears by the note appended to the case in 23 L.R.A.(N.S.) 699. A review of the authorities upon the right of a wife to sue her husband for a personal tort may be found in a note in 6 L.R.A.(N.S.) 191.

Computation of days of grace for payment of insurance premium. A novel question as to the computation of days of grace allowed for the payment of an insurance premium, when the date of payment falls on Sunday, is passed upon in the Texas case of Aetna L. Ins. Co. v. Wimberly, 112 S. W. 1038, 23 L.R.A.(N.S.) 759, which holds that in such case the time begins to run on Sunday, and not on the day following.

Constitutionality of statute limiting height of building. That the state may, in the exercise of the police power, limit the height of buildings to be erected in cities when, in its judgment, the public health or public safety so require, was decided in Welch v. Swasey, 193 Mass. 364, 79 N. E. 745, 23 L.R.A. (N.S.) 1160, which further held that the legislature, in regulating the height of buildings in a city, may permit them to be higher in sections devoted to office purposes than in the residential portions, although the streets in the former may be narrower than in the latter, and that the legislature may delegate to a commission the power to determine the boundaries within which buildings of different heights shall be erected. It was also determined in this case that a prohibition of the erection of a building of greater height than 80 feet in the residential portion of a city, unless the width of the street shall be at least half its height, is not so unreasonable as to make the regulation invalid. A more recent decision upon the same question was made in Cochran v. Preston, 108 Md. 220, 70 Atl. 113, 23 L.R.A.(N.S.) 1163 which upholds the power of the legislature to limit the height of buildings in a section of a city devoted to fine residences, public buildings, and works of art, for the purpose of protecting such part of the city from the ravages of fire. This case is also authority for the proposition that the exception of churches in a statute limiting the height of buildings does not deprive the owners of private property of the equal protection of the laws. The few decisions relating to this subject are collected in a note in 23 L.R.A.(N.S.) 1160.

Right of municipality to favor organized labor. An interesting question was passed upon in the recent Iowa case of Miller v. Des Moines, 122 N. W. 226, denying the power of a municipality to require its

work to be performed only by union labor. The decision is in harmony with the previous cases on this subject, which accompany the report of the Miller Case in 23 L.R.A.(N.S.) 815, and uniformly deny the right of public bodies to discriminate in favor of union labor.

Placing in rogues' gallery portrait of one accused of crime. The right of the police authorities to place and retain in the rogues' gallery the portrait of a person accused of crime, but who has not been convicted, came up for further consideration in the recent Maryland case of Downs v. Swann, 73 Atl. 653, holding that the photographing and measuring, before trial, for purposes of identification, by the Bertillon system, of one arrested on a criminal charge, does not infringe any of the constitutional rights of the accused, if the photograph or the means of identification are not to be placed in the rogues' gallery or distributed prior to his conviction, unless he becomes a fugitive from justice. The recent cases upon the subject are collected in a note accompanying this decision in 23 L.R.A.(N.S.) 739, the earlier decisions having been reviewed in a note in 7 L.R.A.(N.S.) 274. That the portrait of a person actually convicted of crime may be kept in the rogues' gallery for purposes of identification in the event of the escape of the prisoner or his commission of a subsequent offense is unquestionable. But it has not been, and ought not to be, held generally the picture of that one whose guilt or innocence of the crime of which he is suspected remains to be judicially determined, may be placed with those of convicted felons.

Destruction of record of deed as affecting constructive notice. The recent Oklahoma case of Cooper v. Flesner, 103 Pac. 1016, 23 L.R.A.(N.S.) 1180, holding that where a deed has been once recorded, a subsequent burning or other destruction of the records will not render the same ineffectual as notice to subsequent purchasers, is in harmony with the earlier decisions on the subject, which are collected in a note accompanying the L.R.A. report of the case. It may also be said that, according to the great weight of authority, the mere failure of a grantee or mortgagee, the record of whose deed or mortgage has been destroyed, to avail himself of the statutory provision for the restoration of the record or the re-recording of the deed or mortgage, does not prevent him from relying on the original record as constructive notice, if the statute does not in terms or by clear implication make such restoration or re-recording a condition of continued constructive notice.

Anticipatory contract making provision for wife if she obtain divorce. A question not previously passed upon by the courts was presented by the recent California case of Pereira v. Pereira, 103 Pac. 488, holding that a contract made between husband and wife during the pendency of divorce proceedings instituted by the latter against the former, and intended to effect a reconciliation, to the effect that, in case the husband should so conduct himself as to give the wife a new cause of action for divorce, he would pay her a specified sum in full settlement of all claims against his estate, is void as contrary to public policy. It should be noted, however, as appears by the annotation accompanying the Pereira Case in 23 L.R.A.(N.S.) 880, that agreements by a husband to provide for his wife in the event of such subsequent conduct on his part as to lead to a separation have been generally upheld. A similar question was considered in the recent Rhode Island case of Darcey v. Darcey, 71 Atl. 595, 23 L.R.A.(N.S.) 886, holding that a husband and wife have power to enter into a contract by which he undertakes to transfer real estate to her in case he resumes illicit relations with a paramour.

Effect of pending appeal upon right to plead conviction as bar. There are but few authorities upon the question of the effect of the defendant's taking an appeal from a conviction, upon his right to plead the conviction as a bar to a

second prosecution for the same offense, and these seem to be in direct conflict. The recent Texas case of Dupree v. Texas, 120 S. W. 871, 23 L.R.A.(N.S.) 596, holds that a pending appeal from a conviction of an unlawful sale of intoxicating liquor will prevent the conviction from being a bar to another prosecution for the same offense. There is undoubtedly much authority in civil cases for the proposition that an appeal or writ of error, during its pendency, deprives the judgment of that finality of character necessary to entitle it to admission as *res judicata:* but it may be considered doubtful whether a rule of the civil courts, in which both parties stand upon an equal footing, is applicable to a criminal case, where the defendant is entitled to have statutes and rules of procedure construed strictly in his favor.

Right of one of class or group of persons to maintain action for libel or slander. Whether a libelous or slanderous charge made against a number of persons constituting a class or group is actionable by any one of them has been considered in a number of cases which are collected in a note in 23 L.R.A. (N.S.) 726, accompanying the case of Levert v. Daily States Pub. Co., holding that a sweeping charge of official favoritism and misconduct, leveled against the members of a public board without exception, necessarily points the finger of condemnation at every one of them, though none are named, and, if not proven, constitutes a libel, if the members are known and the publication is generally understood to apply to them. The authorities seem to indicate that an individual belonging to a class has no right of action for defamatory words which do not point to him individually, unless the language is directed against a small group or a restricted portion of a class, and so framed as to include all. If the charge, although made against a small or restricted group, is indefinite and impersonal, one of the number, in order to establish a right of action, must show the application of the language to himself.

Right to require life tenant of money to give security. The well-established rule requiring a legatee of a life interest in money, or its equivalent, to give security for the benefit of the remainderman, is applied in the recent case of Scott v. Scott, 137 Iowa, 239, 114 N. W. 881, holding that security may be required of such a legatee, although the will made him executor without bond, where his intention is to spend much time out of the state, he is hostile in feeling to the remainderman, and, in making investments, has not exhibited the care and prudence ordinarily essential for the preservation and care of the property. The cases upon this subject are reviewed in a note accompanying the decision in 23 L.R.A.(N.S.) 716.

Enjoining sending person to pest house. While the courts will not generally restrain or coerce the action of a municipal corporation acting through its duly appointed officers or boards, merely because such action is unwise, extravagant, or a mistake of judgment, yet they may do so where the conduct complained of is fraudulent, clearly oppressive, or grossly abusive. This is illustrated by the recent South Carolina case of Kirk v. Wyman, 65 S. E. 387, holding that a board of health may be enjoined from sending to the pesthouse which is unfit for her habitation, an elderly lady of refinement who has a form of leprosy, slightly, if at all, contagious, where quarantine in her own house will afford complete protection to the public. This question does not appear to have been previously passed upon. Cases in which an injunction has been sought restraining health officers are collected and discussed in the note accompanying the Kirk Case, in 23 L.R.A.(N.S.) 1188.

Effect of injunction against suing on running of statute of limitations. Courts of equity, and courts which allow themselves to be governed by equitable considerations, have repeatedly held a debtor to be equitably estopped from taking advantage of the running of the

statute of limitations during the continuance of an injunction restraining the creditor from suing. The recent Minnesota decision of Lagerman v. Casserly, 107 Minn. 491, 120 N. W. 1086, limits the application of this rule to cases where the restraint is induced by the debtor, holding that the statutory provisions suspending the running of the period during the time the beginning of an action is stayed by an injunction or other statutory prohibition apply only between parties to the suit, and not where the injunction is granted in a suit to which the debtor is not a party. This decision is supported by an earlier precedent referred to in the note accompanying the Lagerman Case, in 23 L.R.A.(N.S.) 673, which is supplementary to a previous note in 3 L.R.A.(N.S.) 1187.

Liability of municipality for injury to employee. An unusual question, involving the right of an employee of a city to recover for personal injuries sustained in its service and upon premises maintained by it, is considered in the recent case of Bell v. Cincinnati, 80 Ohio St. 1, 88 N. E. 128, holding that one employed and acting at the time as a guard of prisoners working in a stone quarry within the corporation, and who is injured by an explosion while removing the lid of a box of percussion caps which were to be used in setting off a blast in the quarry, cannot recover damages of the municipal corporation. The few cases that have hitherto passed upon the question are in substantial accord with Bell v. Cincinnati, as appears by the note accompanying that case in 23 L.R.A.(N.S.) 910.

Liability of municipal corporation for failure to prevent improper use of streets. The rule seems to be well supported by authority as well as reason, that the duty of a municipal corporation to use due care to keep its streets in a safe condition renders it liable for failure to prevent any use of a street which amounts to a dangerous nuisance. The cases on this question are reviewed in a subject note in 23 L.R.A. (N.S.) 636, accompanying the Illinois case of Van Cleef v. Chicago, in which it is held that a municipal corporation which, without authority, permits a fair to be held in one of its streets, with the attendant structures and shows, is liable for injury to a patron who, in attempting to leave a show, passes over an unsafe platform erected in the street to afford access to such show, and is jostled off by the crowd, to his injury. A similar question is presented by the recent Kansas case of Cherryvale v. Hawman, 101 Pac. 994, 23 L.R.A.(N.S.) 645, holding that where the members of a charivari party forcibly place a bride and groom in a wagon against their will, and draw them up and down the streets, they are engaged in an act of unlawful violence within the meaning of an instruction that "a 'mob' is an unorganized assemblage of many persons intent on unlawful violence either to persons or property;" and the fact that they are good natured, and intend no serious harm to anyone, does not absolve the corporation from liability.

Sale of unpatented part as infringement of patented combination. It was laid down in Leeds & Catlin Co. v. Victor Talking Mach. Co. 83 C. C. A. 170, 154 Fed. 58, 23 L.R.A.(N.S.) 1027, that the manufacture and sale of unpatented disks for use in a talking machine in which the disks are an element of the patented combination for the production of sound infringe the combination patent as soon as the disk is used in the combination. This decision is of more than ordinary importance,—especially in view of the fact that the doctrine enunciated limits to a great extent the right to produce an element in a combination, either for repair or replacement, as such right was formerly enunciated and supposed to exist. The earlier decisions dealing with the subject are discussed in the note accompanying the L.R.A. report of the case.

Eligibility of officer. Whether the eligibility of a public officer is to be determined as of the time

of his election or appointment, or of his induction into office, is a question upon which the courts seem to be quite evenly divided. There is possibly a slight preponderance of authority in favor of the view that the word "eligibility," when used in connection with an office, without explanatory words, relates to the time of taking office, instead of the election or appointment. Such is the holding in the recent Idaho case of Bradfield v. Avery, 102 Pac. 687, which is accompanied by a note in 23 L.R.A.(N.S.) 1228, in which the prior decisions are collected and reviewed.

Right of political party to recommend or censure candidates. The constitutionality of a statute prohibiting the nominating, recommending, or censuring of specified officers by certain political organizations, or at designated elections, is considered for the first time in the recent Nebraska case of State ex rel. Ragan v. Junkin, 122 N. W. 473, holding an enactment providing that candidates for judicial and educational offices shall not be "nominated, indorsed, recommended, censured, criticized, or referred to in any manner, by any political party, or any political convention or primary, or at any primary election," is a violation of § 5 of the Bill of Rights, declaring that "every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense;" and of § 19 of the Bill of Rights, declaring that "the right of the people peaceably to assemble to consult for the common good, and to petition the government, or any department thereof, shall never be abridged." Some cases throwing a side light on the question are discussed in the note accompanying the report of the case in 23 L.R.A.(N.S.) 839.

Taxation of foreign stocks held by resident executor. The question whether a resident executor or administrator of a nonresident decedent, who qualified in the state in which his testator died, but not in the state of his own domicil, can be required to list property for taxation legally in his custody, but which he has never removed from the state in which his decedent died, or invested in any manner in his own state, is decided in the negative in Commonwealth v. Peebles (Ky.) 119 S. W. 774, 23 L.R.A. (N.S.) 1130, which seems to be the only case in which the point has been raised for adjudication.

Discontinuance of telephone service for abuse of privilege. The right of a telephone company to remove the instrument or discontinue the service, on the ground that the subscriber has abused the privilege, is presented by the Iowa case of Huffman v. Marcy, Mut. Teleph. Co., 121 N. W. 1033, 23 L.R.A.(N.S.) 1010, holding that the service of a customer cannot be discontinued two months after he has been warned for using profane and indecent language over the line, and interfering with its use by other patrons, where he has heeded the warning and has not repeated the offense. The question seems to have been considered in but two other cases, which are reviewed in a note in 23 L.R.A.(N.S.) 1010.

Validity of stipulation of incapacity of testator. The recent Wisconsin case of Re Dardis, 135 Wis. 457, 115 N. W. 332, 23 L.R.A.(N.S.) 783, seems to be a case of first impression on the question of the validity of a stipulation that a testator was mentally incompetent, entered into by the parties to a probate proceeding, for the purpose of securing a denial of the probate of the will. In this case the court held that a probate court cannot refuse the probate of a will merely because all the interested parties have stipulated that the testator was of unsound mind. The decision is based upon the doctrine that proceedings to probate a will are proceedings *in rem*, which public interest demands should be pursued to a final adjudication, regardless of the wishes of the parties in inter-

est. Upon this more general question, it may be said that the courts of other jurisdictions, although generally recognizing that proceedings to probate a will are proceedings *in rem*, hold that the proceeding is *inter partes* to the extent that the parties may control the probate proceedings, even to the extent of doing away with the probate. The cases relating to this subject are collected in a note in 16 L.R.A.(N.S.) 236.

Law governing liability of telegraph company delaying telegram. This question is presented by the recent Alabama case of Western U. Teleg. Company v. Hill, 50 So. 248, holding that in case of breach of an undertaking to transmit a telegram from one state to another, where it is to be promptly delivered to one of its citizens, by failure to deliver it promptly after it has reached the latter state, its laws will govern in an action for the breach, brought either in contract or in tort, in its courts, in determining whether or not damages can be allowed for mental suffering caused by the delay, where no negligence is alleged or shown to have occurred in the former state. The opinion is this case evinces some uncertainty in the mind of the court as to the exact ground of the decision, although several are suggested. If it be based upon the theory that the breach of duty, whether regarded as growing out of a contract or imposed by law, occurred within the state where the telegram was to be delivered, or if it be considered that the law of such state should govern because that was the place of performance of the contract, it is clearly opposed to the weight of authority as expressed in similar cases, where the form of action was *ex contractu*, and not *ex delicto*. Nor can the decision be supported on the ground that the courts of the state where the message was received should refuse, on the grounds of public policy, to abide by the rule of damages prescribed by the law of the state in which the contract was made, even assuming that in general that law should govern, since the courts very rarely, if ever, upon the grounds of public policy, subject a contract properly governed by the law of another state to a positive and affirmative substantive rule of the forum as such. Neither can this decision be sustained on the theory that the court should, by analogy to the practice of the Federal courts, follow its own judicial precedents as to the right to recover for mental anguish, irrespective of those of the courts of the state in which the contract was made, since the practice of the Federal courts in this respect furnishes no valid precedent for a similar practice by the state courts. The most recent cases dealing with the subject are reviewed in a note in 23 L.R.A. (N.S.) 648, which is supplementary to notes in 5 L.R.A.(N.S.) 751, and 63 L.R.A. 532.

Religious belief as qualification of witness. In most of the states, no religious belief is required to render a witness competent, and in some states even an atheist may be a competent witness. On the other hand, the rule still prevails in numerous jurisdictions that a belief in Divine punishment is necessary in order to render a witness competent, and in a number of states the credibility of a witness may be attacked upon the ground of his religious belief or disbelief. In Pumphrey v. Nebraska (Neb.) 122 N. W. 19, 23 L.R.A.(N.S.) 1023, the court recently held that an adult citizen of the Empire of Japan is prima facie competent to take an oath and testify in the courts of the state; that if a litigant conceives that such a witness does not understand or will not give heed to the oath administered, he may interrogate the witness before he is sworn, or prove his incompetence by other relevant evidence, but that, if he fails to do so, the relevant evidence of the witness should be received. The recent cases dealing with this question appear in a note accompanying the L.R.A. report of the Pumphrey Case, while the earlier decisions upon the subject are collected and discussed in an exhaustive note in 42 L.R.A. 553.

NEW OR PROPOSED LEGISLATION

Body Executions against Infants.—The case of the ten-year-old boy, Bronislaw Niemeszek, who was arrested in Orange, New Jersey, recently, and imprisoned in the Essex county jail, Newark, for his failure to pay a judgment debt, and was released only by his lawyer, Duane E. Minard, getting him adjudged a bankrupt, has moved Mr. Minard, who is a member of the New Jersey legislature, to prepare an amendment to the law providing for a body execution against a debtor, which, he hopes, will prevent a recurrence of the incident. The amendment provides: "No execution shall be issued against the body of any judgment debtor who is under the age of sixteen years, and where the judgment debtor is above the age of sixteen and under the age of twenty-one years, it shall be within the discretion of the judge, after ascertaining the age of the judgment debtor and the nature of the offense or action complained of, whether such execution against the body shall issue."

Hats and Hatpins.—A bill before the Maryland legislature proposes to limit the diameter of women's headgear to 10 inches, and imposes severe penalties for violation of the law. Some time ago the Louisiana legislature passed a law known as the "high-hat bill," prohibiting the wearing of hats at theaters. This act, although at first subject to much ridicule, has proven a vertiable boon to theatergoers and its provisions are likely to be adopted in other states. One of the Philadelphia papers has recently devoted considerable space to bewailing the fact that the ladies of that city persist in wearing the immense and bizarre creations known as "Merry Widow" hats, at the theaters, making it next to impossible for people seated behind them to get more than a passing glimpse of what is going on on the stage.

Simultaneously there comes an outcry against the rapier-like hatpins worn by many women. In Chicago an ordinance curtailing their use has been introduced, and similar legislation is being urged in other localities.

Reform in Indian Laws.—An amendment proposed to the Indian law would take from the peacemakers' courts of the Cattaraugus and other Indian reservations in the state of New York the power to grant divorces, as well as deprive the peacemakers of all tribes of the right to perform marriages. The chiefs whose decisions in litigations involving title to real estate have heretofore been final must hereafter submit to having their judicial opinions reviewed by the judges of the counties in which their reservations are situated. In view of the revelations regarding Indian methods of marriage and divorce, made by the special committee which recently investigated the condition of the Indian, it is probable that the proposed amendments will be incorporated into the present law. When an Indian tires of his squaw these days, he notifies the peacemakers' court, composed of half a dozen or so chiefs. When the spirit moves the court, it convenes, and the dissatisfied redskin states his reasons for wanting to marry a prettier maiden. Over many pipes of tobacco the court considers the question, and finally arrives at a decision. How much wampum or how many red blankets he pays in alimony is an after consideration.

Increased Salaries for Federal Judges.—Representative Moon, of Pennsylvania, has introduced a bill proposing to increase the salaries of the justices of the United States Supreme Court to $17,500, the United States circuit judges to $10,000, and the district judges to $9,000. The measure also proposes to make the salary of the Chief Justice of the Supreme Court $18,000, instead of $13,000, which he at present receives. The associate justices of the highest court in the land now get $12,500 a year.

New Injunction Bill.—What is generally recognized as the Administration bill on the important subject of the regulation of court injunctions has been introduced by Representative Moon, of Pennsylvania, chairman of the committee on revision of laws. In effect it provides that no injunction, whether interlocutory or permanent, shall be issued by any Federal court or judge without previous notice and an opportunity to be heard, on behalf of the parties enjoined. But, it says further, if there appears a probability that "immediate and irreparable injury" is likely to ensue, the court may issue a temporary restraining order without notice. It is required that every such order shall define the injury, state why it is irreparable and why granted without notice, and shall not extend more than seven days from the time the notice is served. In explaining his bill Mr. Moon said: "My bill defines accurately the distinction between the various phases of the injunctive process. It divides injunctions proper into two comprehensive classes,—interlocutory injunctions and final injunctions,—and prohibits absolutely the issuance of such injunctions without notice and without an opportunity of the defendant to be heard. It then provides for what is sometimes in present practice indefinitely termed a 'preliminary or temporary injunction,' but which is designated in the bill by its appropriate title of 'restraining order.' An important feature of the bill is that it accurately and definitely defines the two essential prerequisites of a restraining order without notice: First, by irreparable injury; and, second, the additional requirement that the giving of notice or the delay incident thereto would prevent the doing of the act sought to be restrained. It also requires that the judge before granting this order shall find these facts judicially, either from affidavits filed or showings otherwise made, and shall spread them upon the records of the court."

Screens for Barber Shop Windows.—A member of the Michigan legislature believes that the agony of the patient in the barber's chair should be hidden from the public gaze, and wants screens placed in the windows. It is a good suggestion. There is no reason why a man should be made a free public spectacle while having his beard removed. Let people with a yearning for excitement go to the moving picture shows.

Woman Suffrage Measures.—Several bills upon this subject are pending before the New York state legislature at the present writing. One provides for a concurrent resolution to amend article II., section 1, of the state Constitution by striking out the word "male" in the qualification of voters, and thus give women equal suffrage with men. By the terms of the bill or concurrent resolution, the amendment would be submitted to a vote at the next state election. The suffragists favor this amendment, which would be approved or rejected by the votes of the men, as in the case of any constitutional amendment; but they oppose Senator Brackett's bill, which provides that an election shall be held on the day before the general election this year, at which only women shall vote, in order to find out whether the women of the state desire the right of suffrage. This referendum would have no legal force either for or against suffrage. So far as results go, it would seem to be a foregone conclusion that the women who want the ballot would be sure to defeat those who do not care about it. The only apparent value of such a campaign is that it would doubtless produce valuable educational results, and the result would carry considerable moral weight if the majority either way were pronounced. It certainly places the anti-suffragists in an embarrassing position, as it forces them to go and vote that they do not want to vote.

It really matters very little, however, so far as the merits of the suffrage question are concerned, as to just what portion of the female population would care to exercise the privilege of voting. The right must be extended to all in order that any may avail themselves of it. The fact that some or many would stay away from the polls is of no more significance than the fact that many men habitually neglect to vote.

A further measure has been introduced to give women the right to vote on local option when such elections are held. The license question vitally affects wives and mothers and the best interests of the home. There would seem to be no good reason for debarring women the privilege of expressing at the polls their sentiment on this subject, at least.

Automobile Legislation.—Automobile manufacturers and owners are making an effort to secure a law that shall provide for a Federal license and a Federal tag for automobiles in this country. Having these, an automobile duly licensed in one state could make a tour through or in another state without being subjected to annoyance and persecution from petty local officials, and ordinances. Senator Depew, in a recent address to automobile manufacturers, showed that France had succeeded through diplomacy in making a French license good for a tour in about all the countries of Europe; yet Americans cannot make a tour of their own country, visiting all the states,—if that were possible,—without being held up every time they cross state lines on account of the absence of uniformity of laws regulating motor-car uses. Possibly the Federal government has not the constitutional power to enact a law of the kind noticed, but surely it should be possible to bring about uniformity through state action if not by Federal action. One of the strongest supporters of the bill is Congressman Brantley, of Georgia, who said he believed Congress had a right to pass any law desired relative to the traffic of automobiles. "The time will come, I predict," he added, "when Congress will be compelled to take hold of the interstate commerce of automobiles, and regulate and protect it. Whatever appeal you make to Congress should be predicated upon the right of Congress not only to protect and regulate, but also to restrain and properly control the growing commerce of the country."

A vigorous campaign for a new law in New York was made a year ago; a bill satisfactory to most owners of motor vehicles was passed, but it was vetoed by Governor Hughes on the ground that it did not give adequate protection to the general body of the people. The bill of 1909 abolished the speed limit, except that speed in excess of 30 miles an hour was to be regarded as reckless driving,—and it was reckless driving only that was forbidden. In other words, instead of being restricted to 8 or 10 or 15 or 20 miles an hour, as the case might be, the drivers of automobiles were permitted to go as fast as they pleased anywhere in the state, up to 30 miles an hour, and were to be held accountable only for recklessness. Governor Hughes thought the time had not come when such a privilege could be granted with safety. From the half a dozen automobile bills introduced in the present legislature, it is expected that a measure satisfactory to the automobilists and the legislators can be evolved. The Callan bill is the Massachusetts law, providing for speed limits, license fees ranging from $5 to $25, with extra fees of $4 for chauffeurs, the examination of chauffeurs and the recording of violations of the law in the office of the secretary of state, to be transmitted to county clerks. Under the Dana bill it is made a felony for the driver of a machine to run away after injuring a person. The Bates bill is practically the Hamn measure of last year amended to meet the governor's views.

A bill compelling automobile owners to file a bond of $1,000 with the secretary of state as security for injury or damages caused to persons or property has also been introduced by Assemblyman Boylan, of New York.

It is also worthy of note that the commission of highways in its first annual report to the New York legislature, after declaring that automobile traffic has compelled more expensive methods of construction of highways throughout the state, which will cost annually over $1,000,000, recommends the enforcement of an annual registration fee for automobiles, which will give the state not less than $500,000, the proceeds to be devoted to the care and maintenance of improved highways.

New Jersey motorists have given earnest support to the Edge automobile bill,

which, after passing the lower house, was at last accounts pending in the state senate. The automobilists want the bill made a law because, under the present law, they must secure registrations for their cars before they can use the roads of Pennsylvania, Massachusetts, Connecticut and Delaware,—all these states having reciprocal clauses in their motor vehicle bills, which give free access to their roads only to nonresidents from states that accord visitors similar privileges. The motorists therefore want the Edge bill, which would do away with the annoyance of securing a New Jersey registration for limited periods, enacted into law,—especially as they fear New York state will pass a reciprocal measure.

Governor Harmon, of Ohio, made the following comments on automobiles, in his annual message to the members of the state legislature: "Fines alone have proved ineffectual to check the great and growing peril from the fast and reckless running of automobiles. There should be greater strictness in the issue of licenses, and provision should be made for promptly revoking them as a further penalty. Such a law is said to work well in New Jersey. The present license fees seem too low. I think, too, that fairness requires grading them by capacity and size." It is said that the majority of the state legislators are opposed to making any radical changes in the present motor vehicle laws. It is thought that by grading license fees on the basis of horsepower the entire law would be invalidated, as the Ohio state Constitution prohibits the issuing of licenses.

Proposed Immigration Law.—Not further restriction, but merely to make possible such restriction as the existing law intends, but has not accomplished, is the object of a proposed new immigration law recommended by Daniel J. Keefe, the Commissioner General of Immigration, in his annual report for the fiscal year 1909. It is proposed to accomplish this by codifying, arranging in logical sequence, and strengthening at their weak points, all existing laws on the general subject of immigration and Chinese exclusion. Some of the principal suggestions are: So defining the term "alien" as to leave no doubt that it includes all persons not citizens; extending the contract labor provisions to forbid and penalize the inducement of immigration by false as well as genuine promises of employment; penalizing an attempt to import foreign laborers, and permitting the importation of alien skilled laborers if labor of like kind unemployed cannot be found here, only if the consent of the Secretary of Commerce and Labor is obtained in advance; increasing the fine against steamship companies for taking on board dangerously diseased aliens from $100 to $200.

Deportation of Alien Convicts.—Wholly sound is the principle embodied in the bill which Representative Bennet, of New York, has introduced in Congress, providing that all aliens committed to a state prison for not less than one year shall, at the expiration of their sentences, be deported to their native countries by the Federal government. The penal institutions of many states swarm with immigrants who still owe allegiance to other flags. The three state prisons of New York harbor 1,100 foreign-born convicts who have never taken out naturalization papers. In the Connecticut penal colony at Wethersfield, about 225 alien prisoners may be found. The prisons of Massachusetts, New Jersey, Pennsylvania, and various other states house multitudes of unnaturalized immigrants. The burden which these alien convicts put on the states is as heavy as it is unjust. Their support costs scores of thousands of dollars. They force a material enlargement of the penal organization, and constitute a serious problem in prison administration. They owe no fealty to the American government. They are both a load and a peril. To deport the alien prisoners to the countries to which they continue to owe their allegiance violates no theory of national obligation.

Amendment to the Bankruptcy Law.—It has been proposed to amend the Shirley bill, which has just passed the House, and is at this writing in the Senate judiciary committee, by adding a provision

that "only one petition can be filed by a voluntary bankrupt in six years."

The object of this amendment is to prevent a series of petitions being filed by voluntary bankrupts for the purpose of hindering, delaying, and defrauding their creditors. Under the present bankruptcy law, only one discharge can be granted in six years, and this feature was evidently intended to prevent an evil which this amendment would cure. The filing of a petition in bankruptcy operates as a stay and injunction against all creditors until it is dismissed by motion of the creditors' attorney. Under the present law, many debtors, after procuring a discharge, file other petitions, and never expect to procure a discharge, and thus delay their creditors, who, often for small amounts under $50, which in the aggregate may be several hundred dollars, do not care to incur the expense and costs incident to going into the Federal court for the purpose of making motions and procuring orders to dismiss the petition. It puts the burden on the creditor to have the petition and further proceedings dismissed. The voluntary bankrupt, twelve months after filing his petition, considers the petition lapsed and of no force and effect, as the law requires him to make application for a discharge within twelve months, if he desires a discharge; hence, he will file another petition, and do as he had done in the previous one,—not ask for a discharge; then later he will file another petition, and others, until six years have passed, when his final petition will carry the cumulative debts of the past six years; then he will get a discharge, wiping out all past creditors' debts. This question has been fully discussed in the case of Bluthenthall v. Jones, 19 American Bankruptcy Reports, 288. The decision was rendered by the United States Supreme Court, January, 19, 1908.

Under the proposed amendment, only one petition can be filed in six years, and the burden is shifted from the creditor to the debtor. The creditor would not be put to the expense of going into court on a series of petitions such as may be filed under the present law.

The bankruptcy law is an extraordinary relief granted to delinquent debtors, and should be so framed that the creditors may be protected from frauds.

The Need for a Patent Court.—A patent is a species of property created by Congress under the authority of the Constitution. It confers a right coextensive with the United States. It is assumed by law to have the same meaning throughout the United States; and unless it has that uniformity throughout the United States, its value is depreciated and may be destroyed. Has a patent that character as the law now operates? Consider a specific case. A patentee brings suit against a supposed infringer in Ohio. His patent is declared invalid. Then he brings a suit on the same patent in New York. The New York court has great esteem for the court in Ohio. Nevertheless it studies the case and says: "We think the court in Ohio wrong, and the patent is valid." The result is that the patent is valid in the second judicial circuit and invalid in the sixth judicial circuit. Under the authority of the Supreme Court decision in the case of Kessler v. Eldred, this patent—although it has been declared valid in the second circuit—in no way controls the successful defendant in the sixth circuit. Not only has the latter the right to sell the infringing article all over the United States, including the second circuit, but all his customers are protected. So the patent is finally killed by the decision in the sixth circuit, despite the decision of the court of appeals of the second circuit.

Suppose an appeal goes to the United States Supreme Court. Suppose that court sustains the decision of the second circuit, and validates the patent. That does not affect in the least degree the absolute right, as a matter of law, of the successful infringer in the case in the sixth circuit, and his customers, to sell freely all over the United States. In other words, not even the Supreme Court can save that patent from the decision of the sixth circuit. Here, manifestly, is a situation of the most pronounced injustice to a vast aggregation of American property.—Baltimore News.

INTERNATIONAL AFFAIRS

Alien Land Law in Japan—The Japanese government has decided to grant to foreigners the privilege of owning land in Japan when the approaching revision of the treaties takes place in 1911. Foreigners have heretofore held land under the perpetual lease system, taking leases for a term of fifty years, renewable at the end of the time, or by superficies held in the names of Japanese citizens. These perpetual leases have really been of more advantage to the foreigners in Japan than the ownership of the land, for the reason that the lease exempted them from payment of municipal taxes, with the exception of a nominal tax, despite the fact that the value of the properties held has increased in some cases as much as 500 times since the leases were taken.

Prospective Territorial Expansion.—The Spitzbergen Islands, described as No Man's Land, 437 miles north of Norway, and comprising more than 15,000 square miles of territory, may be annexed to the United States. Some time ago American capitalists learned of great coal deposits there, which were being worked by Norwegians. The latter were bought out, and the Americans began mining coal under the name of the Arctic Coal Company. For the purpose of confirming their claim, a bill has been introduced by Senator Lodge, providing that islands not occupied by the citizens of another government, and of which our citizens take peaceable possession, may be considered, at the discretion of the President, as appertaining to the United States, if such islands contain deposits of phosphates, coal, or other mineral.

Our Relations with Japan—That we are going to have trouble with Japan may be regarded as one of the most serious probabilities for this country in the not distant future. The trouble comes up in the insistent desire of the Japanese to be admitted to the United States, and to be treated in every way as are the citizens and subjects of the most favored nations. The present treaty, which denies this equality to the Japanese, expires in 1911, and the Japanese government is eager for a change. The present situation has been accentuated by the bill introduced by Representative Hayes, of California, providing for the exclusion of all those who cannot qualify for citizenship. Although no race is specifically mentioned, it may be taken for granted that it is directed against Japanese immigration, and as such it will be distasteful to the Japanese government. The present exclusion law is very offensive to the pride and military prowess of the Japanese. It is probable that Japan will attempt to obtain a treaty reflecting less on her prestige as a nation. Should such a treaty be denied them, there will be trouble without doubt, and even war is not impossible.

It seems, however, that the Mikado does not desire his subjects to become American citizens. At the foreign office, recently, it was stated that the declaration in the newspaper Asahi, demanding that the government take steps to compel the United States to extend the naturalization privilege to Japanese, is obnoxious to the Japanese government. The officials declare the Japanese should be encouraged to remain at home, as the population of Japan is inadequate at the best.

NOTES FROM OTHER NATIONS

Brunner Memorial Fund.—Heinrich Brunner, professor of law in the University of Berlin, will celebrate on June 21, 1910, his seventieth birthday. A committee of prominent German jurists has been formed to assure due recognition, on this anniversary, of Brunner's achievements as teacher and as writer. It is proposed to publish, as is customary on such occasions, a volume of essays prepared in his honor by his collegues and former pupils, and also to raise a fund

for a permanent memorial. In view of the fact that Brunner's researches in early German law and in the law of the Frank Empire have direct bearing upon the legal history of all the West-European states, including England, and that the results attained by him have been of the greatest value to French, Italian, and English legal historians, it has seemed proper to give to the lawyers and historical students of all these countries and of the United States an opportunity to contribute to the memorial fund. Since the value of the testimonial will depend far more on the number of subscribers than on the amount of their subscriptions, it is hoped that no one who wishes to contribute will hesitate to send a small sum. By direction of the German committee, American contributions are to be sent to Professor Munroe Smith, Columbia University, New York City.

Swedish Prison Labor.—Within a few years the laws of Sweden relative to prison labor have been modified. Industries like basketry, brush-making, and similar work, that the blind, the lame, and the halt can do, have been taken from the prisons, which now manufacture things that can be used by the state railroads, the postoffice, the telegraph service, and the army and the navy. The work is done mostly in the cells. If the cell is not large enough, the convict lives in one and works in another. After the third year of imprisonment, the convicts work together in open shops; but the number serving long terms is small, only 155 in all. Three prisons have 200 inmates each, while 43 others contain from 30 up to 100. Different prisons follow different employments,—tailoring, leather work, cabinet work, harness-making, weaving, the making of mail sacks, etc. Skilled industrial superintendents teach these trades, and the men are fitted to earn an honest living on release. In 1904, before the reorganization of the prison industries, the sum total of revenue from prison work was only about $45,000. In 1908 it was over $150,000. Sweden also finds work for her tramps, from a thirty days' order up to three years, according to circumstances.

Effect of Chinese Constitutional Government.—The wonderful material and moral development in progress in China is given impetus by the scheme adopted for establishing a limited monarchy in lieu of the autocracy that has endured so many centuries in that ancient empire. These changing conditions are presenting opportunities to western enterprises that will bring profitable results to those who take advantage of them. This is especially true of the United States, towards whose government and people all classes in China are especially friendly.

Frank G. Carpenter, a traveler and writer, in describing the great awakening in progress, outlines the plans that have been adopted for introducing parliamentary government, which plans will require almost ten years to carry out. The people are to be prepared for the new dispensation by regular gradation. This year they are being prepared for provincial assemblies, including opening of schools for the study of self-government in cities and villages; in the second year members will be elected to the provincial assemblies; in the third year they will be organized; the fourth year they will bring in a new code of laws, and courts; and in the fifth a system of taxation will be inaugurated. In the years following, they will be prepared for the preliminary reorganization of the government revenues and expenditures, and the establishment of a judicial system.

The plans for popular education constitute an important feature of the new movement. Schools are being established in every part of the Empire, and are being placed under educated Chinese scholars who have studied in Japan, Europe, and the United States.

The new constitution is bound to be of great advantage to the United States, and in a lesser degree to all foreign powers. It will bring about the reorganization of business and trade, and will lead to a large number of Chinese students going abroad. The most of these will be sent to either Japan or the United States. There is bound to be an enormous demand for machinery and the other necessities of our western civilization.

BAR ASSOCIATIONS

ILLINOIS.

George W. Wickersham, Attorney General of the United States, has accepted an invitation to deliver the annual address at the next meeting of the Illinois State Bar Association, to be held at the Chicago Beach Hotel at Chicago on June 23d and 24th next. The Attorney General has not yet announced the subject of his address, but it will be of interest not only to the legal profession, but to the public as well. Other addresses upon questions of general interest will be delivered by distinguished lawyers from different parts of the state. One of the leading questions for discussion will be the revision of the practice and procedure in the courts of Illinois.

The members of the Chicago Bar Association tendered a banquet to Judge George A. Carpenter, at which three hundred and fifty-three lawyers were present. Joseph H. Defrees, president of the association, acted as toastmaster. Gardner Lathrop read a paper on "Contributions of the State Bench to the Federal Judiciary." Remarks were made by John Keough, James C. McShane, James H. Wilkenson, and Major Edgar B. Tolman. Judge Carpenter made a feeling and eloquent response to the tributes paid him by the speakers.

INDIANA.

The annual banquet of the St. Joseph County (Ind.) Bar Association was held Saturday evening, February 26. James Gallagher, of Michigan City, Indiana, was one of the speakers of the evening. The other was Honorable James S. Drake, of Goshen, Indiana.

KENTUCKY.

The recently appointed membership committee of the Louisville Bar Association is in the midst of an active campaign to increase the membership of the organization. A canvass of the attorneys of the local bar is being made by the individual members of the committee, composed as follows: Henry Johnson, chairman; Robert Gordon, Chesley Searcy, Walter Vaughn, E. R. Hopkins, J. C. O'Connor. It is the purpose of the members of the association to make it a more important factor in the community, and at the same time to make the organization itself more of a social club. To that end the entertainment committee has arranged for a series of three noonday luncheons in each year, the first to be held in April. Further there will be a big affair in May at the New Country Club, when a big banquet in lieu of the annual dinner will be held. In a few weeks, after the membership campaign has been finished, the new members will be received into the association at an informal smoker.

MISSOURI.

The March meeting of the Kansas City Bar Association was held on Saturday evening, March 5th. Papers were presented by Maurice L. Alden on "One Remedy for the Waste in Litigation between Master and Servant," and John F. Cell on "Foreign Corporation Laws."

NEBRASKA.

About forty were present at the recent dinner of the Lancaster County (Neb.) Bar Association. The address of the evening was by Judge W. G. Hastings, who read a paper on "Law and Force."

NEW YORK.

At a meeting attended by practically all the lawyers in Genesee county, New York, held in the surrogate's court office recently, what is to be known as the "Genesee County Bar Association" was organized. James Le Seur was named as

temporary chairman, and Frank E. Lawson was named secretary of the meeting. A resolution was adopted appointing a nominating committee consisting of Hon. Edward Washburn and David D. Lent, of Batavia, and Walter H. Smith, of Leroy. This committee reported the following nominations: For president, Frank S. Wood, of Batavia; vice-president, George W. Watson, of Batavia; secretary, Everest A. Judd, of Batavia; and treasurer, Newell K. Cone, of Batavia; and these men were elected. After the election of officers the chair was authorized to appoint a committee on Constitution and by-laws. The following were named on this committee: Bayard J. Steadman, Newell K. Cone, Frank S. Wood, William E. Webster, F. H. Dunham, and Everest A. Judd.

OKLAHOMA.

The third annual meeting of the Oklahoma State Bar Association was held in Oklahoma City February 14th and 15th, 1910. The guest of honor and principal speaker of the occasion was Hon. Charles Nagel, Secretary of Commerce and Labor. The annual address of the president was given by W. I. Gilbert. Papers were read on the following subjects: "Legal Problems of Gas and Oil Development," W. R. Allen, Muskogee; "The Work of the Code Commission," John R. Thomas, Muskogee; "Descent and Distribution of Indian Lands," J. V. Cabell, Ardmore; "Proposed Constitutional Amendments," Frank Dale, Guthrie; "Progress of the Legal Profession," Judge James R. Tolbert, of Hobart; "A New Acquisition as Applied to Inherited Lands of the Five Civilized Tribes," Judge M. E. Rosser, Poteau; "Municipal Bonds and Contracts," H. W. Harris, Oklahoma City. At the banquet on Tuesday evening Thomas H. Owen acted as toastmaster. The toasts responded to were: "Early Experiences of the Judiciary of Oklahoma Territory," John H. Burford, Guthrie; "The Spirit of the State Constitution," Justice M. J. Kane, Kingfisher; 'The Jurisprudence of European Countries," Grant Foreman, Muskogee; "Early Experiences of the Bar of Indian Territory," William P. Thompson, Vinita; "Jury Trials in Corporation Cases," Homer B. Low, El Reno; "The Statutes of Oklahoma," S. H. Harris, Oklahoma City; "Law and Politics," J. B. Thompson, Pauls Valley; "Observations," Charles B. Stuart, McAlester.

PORTO RICO.

A committee of the Porto Rican Bar Association of the Insular Courts has visited Washington for the purpose of protesting against Secretary Dickinson's recommendation that the Federal court of Porto Rico have powers beyond those enjoyed by similar courts in the United States.

TEXAS.

At the annual meeting of the Jefferson County (Texas) Bar Association, Judge J. D. Campbell acted as toastmaster. Over fifty members of the bar were present. The speakers of the occasion were Judge A. T. Watts, James A. Harrison, Charles D. Smith, C. T. Butler, Morris Mothner, Sol. E. Gordon, A. L. Calhoun, D. W. Glasscock, P. A. Dowlen, Stewart R. Smith, and P. H. Doty. The association adopted a resolution expressing its high appreciation of Federal Judge, David E. Bryant, who died recently.

WISCONSIN.

The Jefferson County (Wis.) Bar Association were the guests of the Rock County Bar Association at a banquet at Janesville, recently. James Hamilton Lewis, of Chicago, was the orator of the evening.

At the annual banquet of the members of the Douglas County (Wis.) Bar Association, Judge Parish, of Ashland, discussed the proposed fee bill; John Walsh, of Washburn, read a paper on recent highway legislation; and Fred J. Chris-

topher, as newly elected vice president, fulfilled the customary duty of giving a report of the annual meeting. President Louis Hanitch, who acted as toastmaster, read a personal letter from Judge Winslow.

Twenty-six covers were laid for the annual banquet of the Waukesha (Wis.) Bar Association, former Judge Griswold of the probate court presiding. Toasts were responded to by Assemblyman J. E. Thomas, Judge Martin Lueck, and others.

At the annual meeting of the Rock County (Wis.) Bar Association held recently, all the old officers were re-elected. They are: William Smith, president; John Cunningham, vice president; A. M. Fisher, secretary; and W. H. Dougherty, treasurer. A. A. Jackson read a communication from Chief Justice Marshall, regarding a movement to place proper monuments on the graves of Judges Dixon and Ryan. Judge Grimm was made an honorary member of the association, and gave a brief address.

LAW SCHOOLS

AMERICAN CENTRAL LAW SCHOOL.

The students of the American Central Law School tendered an informal smoker to the former students and graduates of that institution, and to the undergraduates of the other law schools of Indianapolis, at the Commercial Club. Short talks were given by the dean, T. J. Moll, and Judge W. W. Thornton, representing the faculty, and by C. A. Slinger, president of the senior class, F. C. Starkey, C. E. Toon, W. M. Fogarty, and others representing the student body. Representatives of the other schools responded. The smoker marked the end of the first half of the school year, and indicated a successful semester. This was the first legal intercollegiate affair to be held in the city, and aroused considerable interest.

GEORGETOWN UNIVERSITY LAW SCHOOL.

A "smoker," which, however, was much more than a smoker, since it included a seven-course banquet followed by song and speech-making, was given by the post-graduate class of Georgetown University Law School. A piano solo was given by Villaflor Jose Legaspi, a member of the class from the Philippine Islands. Chester Gwinn delivered an oration on the subject, "Ideals." Other speakers were Harold H. Clarke, "Legal Chestnuts;" Henry R. Wasser, "The Lawyer and Eloquence;" Daniel C. Mulloney, "Some Maxims;" Claude W. Owen, "Beginners' Troubles;" James W. Burns, "Sociability;" Woodbridge Clapp, the class poet, "A Poem." John J. Cowhig acted as toastmaster.

INDIANA UNIVERSITY LAW SCHOOL.

The Indiana University Law School has announced the following list of lecturers, with the subjects on which they will address the students of the law school during the month of April: April 11, Guy H. Humphreys, Bloomfield, "The Field of the Slothful;" April 18, L. Ert Slack, Franklin, "The Future of the Law;" April 25, Robert E. Proctor, Elkhart, "The Leaden Heel of the Law."

IOWA STATE UNIVERSITY.

The new and handsome building erected for the use of the Law Department of the State University of Iowa was dedicated on February 22d, with befitting ceremonies. The main address on the occasion was delivered by George W. Kirchwey, dean of the Columbia University College of Law.

MERCER LAW SCHOOL.

The annual moot court of the Mercer Law School began its sessions on February 1st. The class elected the following officers: Sheriff, H. M. Jones, Register, Georgia; deputy sheriff, H. S. Strozier, McRae, Georgia; clerk, G. W. Walker, Augusta, Georgia; deputy clerk, G. A. Teasley, Bowman, Georgia. Arthur Codington, a well-known local attorney, was appointed judge of the moot court by the trustees of Mercer University a year ago, and successfully filled that office last year. He has arranged an important docket for the present court.

UNIVERSITY OF PENNSYLVANIA LAW SCHOOL.

Attorney General J. Hampton Todd headed the list of judges at the fifth mock court trials at the University of Pennsylvania Law School. The present and former judges, who also officiated, were Judges Edward H. Magill, Charles B. Staples, Charles D. Joline, W. B. Broomall, and John L. Kinsey, and Ex-Judges James Gay Gordon and Abraham M. Beitler. Members of the bar and the law school faculty completed the roster of judges. Seven simultaneous arguments were heard on cases involving corporation, criminal, constitutional, and real property law, as well as equity and evidence. Dean William D. Lewis tendered the guests a reception afterwards.

Some good law, more bad law, and a great deal of merriment and knocks on the faculty constituted the sum and substance of the fifteenth annual banquet of the Kent Law Club of the University of Pennsylvania Law School, which was held at Kugler's. The speeches, instead of following conventional lines, took the form of legal topics. Francis A. Stadger, Jr., '10, was toastmaster. The responses were as follows: James S. Gradwell, "Ex-Convicts;" S. Rusling Leap, "Themis, the Goddess of Law;" Thomas A. Kenny, "In re Lewis et al;" James D. Jordan, "The Club;" Roman C. Hassrick, "Uses and Trusts;" Gregory I. Zsatkovich, "Absque Hoc;" S. Hentley Beckett, "Infant Trespassers;" Ernest N. Boatman, "The Unwritten Law;" Frank V. Frambes, "Gill v. Middleton;" Samuel M. Aukney, "Domestic Relations;" Raymond P. Read, "A Mensa et Thoro." The committee were Raymond P. Read, chairman; Gregory I. Zsatkovich, Samuel M. Aukney, James L. Mulhern, and John Kennedy.

LAW INSTRUCTORS MEET.

A meeting of those engaged in giving instruction in the various law schools of the state was held recently in New York city. It was called by a committee of the faculty of New York University Law School, to consider the advisability of effecting a permanent organization, with a view to unifying the efforts of those interested in legal education, to secure improvements in methods, and the raising of requirements for admission to the bar, and, indirectly, the standards of the profession.

NEW LAW BOOKS

"Pocket Code of Evidence." By John Henry Wigmore, LL.D. (Little, Brown & Co., Boston, Mass.) $4.00.

Professor John H. Wigmore, whose elaborate Treatise on the System of Evidence has placed him in the front rank of writers on this subject, has issued a Pocket Code of the Rules of Evidence in Trials at Law. It is designed to serve as a handy summary to which the practitioner may make ready reference, and by the frequent perusal of which he may impress the rules of procedure upon his memory. The volume contains alternate blank pages for annotations. It is handsomely bound in black morocco, has gilt edges and flexible covers, and may be carried conveniently in the pocket for handy use. It is well calculated to become the *vade mecum* of the trial lawyer.

"Fidelity Bonds." By M. Barratt Walker, L. L. B., of the Baltimore Bar. (King Bros., Baltimore, Md.) Cloth, $3.00.

This is a treatise on the law of fidelity bonds, with special reference to corporate fidelity bonds. It is the first work devoted exclusively to the subject. It undertakes to group all the cases relating to this branch of the law, and to give the decisions in a concise manner. Most of the text is in the words of the law, as pronounced by its authoritative tribunals, and very little in deductions or opinions by the author. A large part of the material was collected and used by him in the actual management of extensive litigation throughout the United States, and is in such form as to furnish, without reference elsewhere, material for the preparation of briefs.

"The Federal Corporation Tax Law." By Arthur W. Machen, Jr., (Little, Brown, & Co., Boston, Mass.) $1.50.

In the preparation of this work, it has been Mr. Machen's object to furnish practical assistance to those conducting business corporations which will be required to make returns under the new Federal corporation tax law. The aim has been to explain whatever may be certain in respect to this statute, and to suggest debatable questions. The decisions under former Federal statutes taxing incomes or the earnings of corporations, as well as relevant decisions under the English income-tax laws, have been fully collected. The book is much more than a mere annotated edition of the act of Congress, and is made especially helpful by the addition of an appendix containing forms of returns.

"Law Books and How to Use Them." By John C. Townes, LL. D. (Austin Printing Co., Austin, Tex.) Buckram.

This book was written by Mr. Townes, who is dean of the Law Department of the University of Texas, and author of several well-known works, for the purpose of making the student or lawyer better acquainted with the sources of legal information, and of facilitating their search for the rule applicable to any particular question presented. The books of the written and unwritten law are enumerated, and their weight and value as authority is considered. The concluding chapter contains a number of cases for analysis in accordance with the suggestions previously laid down.

"The Am Ha-Aretz: The Ancient Hebrew Parliament." By Mayer Sulzberger. 2d printing. Cloth, $.75.

"History and Law of the Hayes-Tilden Contest before the Electoral Commission: the Florida Case, 1876–77." By Elbert W. R. Ewing. Cloth, $1.50.

"1910 Supplement to Sayles's Civil Statutes of Missouri." $4.

"Supplement to Nichols's Practice and Pleading in New York." Buckram, $5.

Remington and Ballinger's "Annotated Codes and Statutes of Washington." 2 vols. $19.50.

Thornton on "Patents" (British and Foreign) 1 vol. $6.00.

Baugh and Schmeisser, "Theory and Practice of Estate Accounting." Buckram, $4.00.

RECENT ARTICLES IN LAW JOURNALS & REVIEWS

"Monopolies: The Cause and the Remedy."—10 Columbia Law Review, 91.

"A Revival of Codification."—10 Columbia Law Review, 118.

"Absolute Immunity in Defamation: Legislative and Executive Proceedings."—10 Columbia Law Review, 131.

"Waiver of Tort and Suit in Assumpsit."—19 Yale Law Journal, 221.

"Expert Testimony, Its Abuse and Reformation."—19 Yale Law Journal, 247.

"Notice of Assignments in Equity."—19 Yale Law Journal, 258.

"The Abuses of Receiverships."—19 Yale Law Journal, 275.

"Courts of Last Resort."—19 Yale Law Journal, 280.

"Methods of Dealing with Children Offenders."—74 Justice of the Peace, 75, 87.

"Probation—(I.) The Probation Order."—74 Justice of the Peace, 73.

"Is Christianity Part of the Law?"—46 Canada Law Journal, 81.

"The Doctrine of Nonfeasance."—45 Law Journal, 104.

"The Right to Partition in Kind."—70 Central Law Journal, 129.

"The Defects of the Sherman Anti-Trust Law."—42 Chicago Legal News, 223.

"Nonpartisan Judiciary Nominations."—42 Chicago Legal News, 228.

"Right of Wife to Pledge Husband's Credit."—20 Bench and Bar, 56.

"Roman Law of Divorce."—33 New Jersey Law Journal, 41.

"The Evidence of Prisoners in England."—33 New Jersey Law Journal, 47.

"Taxation of Bank Stock—'True Value.'"—33 New Jersey Law Journal, 50.

"Employees' Compensation Laws."—13 Law Notes, 204.

"American Case Law."—13 Law Notes, 205.

"The Lives of Law Books."—35 Law Magazine and Review, 129.

"The Early History of the Serjeants and their Apprentices."—35 Law Magazine and Review, 138.

"The Protection of Objects of Art and Antiquity in Italy."—35 Law Magazine and Review, 160.

"The Law of Poisons and Pharmacy."—35 Law Magazine and Review, 170.

"The Law as to Left Luggage at Railway Stations."—35 Law Magazine and Review, 177.

"Floating Charges and Liquidation."—35 Law Magazine and Review, 188.

"The Punishment of Crime and the Indeterminate Sentence."—35 Law Magazine and Review, 191.

"Oklahoma's State Guaranty Law."—70 Central Law Journal, 111.

"The Standard Oil Case."—44 American Law Review, 1.

"Law in Books and Law in Action."—44 American Law Review, 12.

"The Last Year with the United States Supreme Court."—44 American Law Review, 37.

"Reform of Legal Procedure."—44 American Law Review, 69.

"French Criminal Procedure and Evidence."—44 American Law Review, 82.

"Proximate Cause in the Law of Torts."—44 American Law Review, 88.

"Employers' Liability in England Prior to the Act of 1880."—58 University of Pennsylvania Law Review, 259.

"James Barr Ames."—58 University of Pennsylvania Law Review, 289.

"Purchase of Shares of Corporation by a Director from a Shareholder."—8 Michigan Law Review, 267.

"The New Doctrine Concerning Contracts in Restraint of Trade."—8 Michigan Law Review, 298.

"Shall Congress be Given Power to Establish Uniform Laws upon the Subject of Divorce among the States of the Union?"—70 Central Law Journal, 93.

"A Comparative Study of English and American Courts."—4 Illinois Law Review, 457.

"Titles Derived under Judicial Proceedings in Illinois."—4 Illinois Law Review, 472.

"Some Principles of Procedural Reform.—4 Illinois Law Review, 491.

"Homicide in Defense of Life or Property."—10 Criminal Law Journal of India, 97.

"Counsel's Fees."—10 Criminal Law Journal of India, 100.

"Expert Witnesses." — 10 Criminal Law Journal of India, 113.

"Some Progressive Demands on the Criminal Law."—10 Criminal Law Journal of India, 126.

"Contributions of the State Judiciary to the Federal Bench."—42 Chicago Legal News, 231.

"Comments of Federal Judges in Jury Trials."—70 Central Law Journal, 147.

"Foreign Corporation Law—Rules of Construction."—40 National Corporation Reporter, 45.

"The Parole Law."—40 National Corporation Reporter, 45.

"The Fellow Servant Rule."—40 National Corporation Reporter, 46.

"The American *Corpus Juris*—A Plan to State It."—22 Green Bag, 59 *et seq.*

QUAINT AND CURIOUS

We shall esteem it a favor if our readers will send us any odd or amusing incidents of a legal nature that may come to their attention.

HISTORIC COURT PAPERS.—The indictment against Aaron Burr for treason, a bench warrant for his apprehension, signed by John Marshall, and a subpœna for Thomas Jefferson, President of the United States, have been filed in the Department of Justice. The historic documents, which are in an excellent state of preservation, belong to the records of the United States circuit court at Richmond, Virginia, from which they were issued when Burr was tried for treason in 1807 for attempting to induce Kentucky, Tennessee, the state of Ohio, and four territories on the Mississippi, Missouri, and Ohio, and a part of Georgia and the Carolinas, to separate from the Union. The papers were loaned by order of Judge Edmund Waddill, of the United States district court at Richmond, to Chief Clerk Field of the Department of Justice, for exhibition at the Alaska-Yukon-Pacific Exposition.

SENTENCED TO ATTEND CHURCH.—The Blue Laws may be the mythical code which some critical historians have labored to prove them, but they seem to be effective in the heart of Hoosierdom. Not long since, three saloon keepers of Indianapolis were caught in the sale of their hospitality on Sunday. They were condemned to go to church once, and to present a ministerial certificate that they had sat the service through from opening hymn to benediction.

SENTENCED TO CARRY PIG HOME.—A pig trained to take part in a performance which its owner gave was stolen the other day, but the animal and its purloiner were speedily located by the Bellville, New Jersey, police. The owner was satisfied with getting the pig back, and did not want to prosecute. But the justice thought the offender should be punished, and ordered him to carry the pig back to the owner's home. This the culprit attempted to do in the presence of the police justice, police chief, and several hundred citizens. The man carried the squealing, struggling animal until his strength gave out, when the remainder of the sentence was remitted.

A JOKE FROM THE GRAVE.—Dead men perhaps tell no tales, but they sometimes play practical jokes, as is attested by the fruitless trip made by a Portland, Maine, woman to the state of Washington, to claim a bequest of real estate made to her in her brother's will. She could find no trace of the property described. She now vividly recalls that her brother was

a great practical joker. He died last June, willing his brother and sisters parcels of land in widely separated regions. Her brother received a tract in Florida, and another sister a half section in Texas. The will was not opened until Christmas, but directed the legatees to claim their lands without delay.

LAW AND GOSPEL.— A broker who attempted to act for both parties to an exchange of real estate, but who concealed his dual employment, was held not entitled to recover commissions, in Gann v. Zettler, 3 Ga. App. 283. The syllabus prefixed to the case by the court is the familiar verse: "No man can serve two masters; for either he will hate the one and love the other, or else he will hold to the one and despise the other."

JUDICIAL VIEW OF AUTOMOBILES.—In Lewis v. Amorous, 3 Ga. App. 50, 59 S. E. 338, an action by a parent to recover damages for the death of her minor son, who was struck by an automobile and killed, the court remarks: "It is insisted in the argument that automobiles are to be classed with ferocious animals, and that the law relating to the duty of the owners of such animals is to be applied. It is not the ferocity of automobiles that is to be feared, but the ferocity of those who drive them. Until human agency intervenes, they are usually harmless. While by reason of the rate of pay allotted to judges in the state, few, if any, of them have ever owned one of these machines, yet some of them have occasionally ridden in them, thereby acquiring some knowledge of them; and we have therefore found out that there are times when these machines not only lack ferocity, but assume such an indisposition to go that it taxes the limit of human ingenuity to make them move at all. They are not to be classed with bad dogs, vicious bulls, evil-disposed mules, and the like."

TO THE VICTOR BELONGS THE SPOILS. —A correspondent reports an incident which he witnessed in a town in South Dakota. A man came running down the street, closely pursued by a man somewhat larger, who overtook him. A crowd gathered, and the city marshal soon had the men before the police magistrate. The aggressor stated that they had been playing poker, and that his adversary, after losing all his money, suddenly grabbed the stakes and fled down the street, and that the witness was pursuing him with the intention of taking the money away from him. The magistrate looked thoughtful for a moment, and then ordered the room cleared of spectators. Last of all he went out himself, carefully locking the door on the two prisoners. In a moment there came the noise of a wild tumult, which gradually subsided. The winner had recovered his money. When all was quiet the magistrate unlocked the door and discharged the prisoners.

LEGAL GEOGRAPHY.—Act No. 132 of Arkansas, 1909, § 4, providing for the issue of bonds by school districts, enacts that if bonds are issued as provided for in the act, no bond shall be valid unless it has the name of the school district written in the southeast corner thereof, by the secretary of the board of the district.

AN ECCENTRIC JUDGE.—The recent death of Judge William Gaslin, of Alma, Nebraska, recalls some interesting anecdotes concerning his career on the bench. It is said that Judge Gaslin usually delivered this somewhat eccentric charge to the grand juries which came before him for instruction. "Gentlemen of the grand jury, you are a relic of the dark ages. In the ancient days of one-man, monarchical power, possibly they were desirable in the protection of liberty for the individual,—for the individual, gentlemen. Now conditions are changed, changed, I say, etc., etc., and you are no longer a necessity, gentlemen; but inasmuch as the Constitution of this state has authorized you, the legislature of this state has constituted you, I am bound to recognize you as a branch of this court, gentlemen, as a branch of this court. But I charge you if any of you prolong your session longer than is absolutely necessary for the purpose of augmenting your *per diem*, thus becoming a useless expense to the county, I will at once dis-

charge you as a set of public plunderers and grafters, gentlemen,—yes, grafters, gentlemen. You will retire to your rooms accompanied by the bailiff, and transact what little business you have to do with all convenient speed, gentlemen, with all convenient speed, gentlemen."

Judge Gaslin was a terror to criminals in his big district in the early days. He had a way of getting a short cut to "substantial justice" that was generally commended, but which sometimes prevented the accused from exercising all of their legal rights. Many of his judgments were reversed, but on the whole, considering the amount of business he transacted, he had less reversals than any other judge in the state on the district bench.

Cattle stealers, horse thieves, and murderers had reason to dread him. After many of his cases had been reversed by the supreme court, two criminals under conviction were taken from the jail at Minden, and hanged to a railroad bridge by a mob. Judge Gaslin the next morning was impelled by curiosity to go out and view the two bodies. "There's two cases the supreme court will not reverse," he said as he looked at the corpses hanging in the air.

WHAT IS A SAUSAGE.—A Pittsburg jury has just been called upon to settle the long-mooted question: "When is a sausage a sausage?" The problem arose in a prosecution for a violation of the food laws. It was the contention of the prosecution, supported by the testimony of a chemist, that the commodity in evidence was composed entirely of flour and starch. The defense objected to the testimony on the ground that only experts familiar with the sausage-making industry were competent to testify. This is the first serious attempt that has been made to define, much less analyze, a sausage. But we live in a critical age, which does not hesitate to bring to judgment our most cherished domestic institutions.

MULE TEAM AS A DEADLY WEAPON.—Judge Thorpe recently held at San Diego, California, that a team of Missouri mules may be considered a deadly weapon, for the reason that the vicious high-kicking animals, led toward a supposed enemy, may do bodily harm with their hind feet. The decision was rendered in the preliminary hearing of Cleve Walsh, arrested on a charge of assault with intent to commit murder by shooting E. W. Zilba. Walsh pleaded self-defense. Among the various weapons used to settle the score were whips, shovels, pitchforks, shotguns, revolvers, and last, but not least, a team of mules. After a fight, Zilba, driving his team of mules, met Walsh, who swore Zilba drove the animals straight into him. As the long-eared Missouri product were ready to raise their hind legs to kick him, Walsh sidestepped and drew a revolver which he fired at Zilba. The judge said no jury in California could convict a man for defending himself against the attack of vicious mules, and ordered the defendant discharged.

PAYMENT UNDER DURESS.—A justice of the peace, residing in a mining town situated among the Rocky Mountains was called upon to officiate at the marriage of a man whose chief characteristic was a reluctance to pay his debts. The ceremony proceeded almost to a conclusion, when the justice, looking intently over his glasses at the bridegroom, quietly remarked: "Now, Joe, give me $3 and I will pronounce you man and wife." Joe reluctantly handed over the required sum, whereupon the justice blandly spoke the fatalistic words that united the destinies of the twain.

AN ONION JAG.—Unsuspected forces in the lowly onion were revealed when a prisoner brought before a Pittsburg magistrate added the onion jag to the category of pitfalls for the unwary. "I was going to call on a friend who has tuberculosis," explained the prisoner, "and my doctor advised me to eat some onions first to avoid contagion. I did. They went to my head, and things began to whirl. I don't remember what happened after that." He added plaintively, "I didn't know onions ever affected folks like that." The prisoner was discharged, and left, followed by a crowd anxious to learn where he got the onions.

PRIMARY EVIDENCE.—A suit was recently pending before a certain justice of Oklahoma. The suit was to recover damages by reason of injury to a large shipment of books. A witness for the defendant was asked: "What was the condition of these books when they arrived?" Attorney for plaintiff objected on the ground that the question did not call for the best evidence. The learned justice said: "It is a well-settled rule of law that the books are always the best evidence. Objection sustained." Thereupon the cause was continued until the following day, when the large shipment of books was, with some difficulty, brought into court and exhibited, and the case proceeded to trial, which resulted in a verdict in favor of plaintiff.

A STRICTLY ILLEGAL PROCEEDING.—In explaining to the readers of the London Times that it is dangerous to insist on legal rights as opposed to constitutional rights, Sir Frederick Pollock has made a neat compend of the American Revolution. "Once," he said, "in a fit of folly, the rulers of this nation did act on their strict rights, and taxed the American Colonies. The answer was a strictly illegal proceeding called the Declaration of Independence. It was ultimately justified by success." There is a phrase for the next Fourth of July orators: "A strictly illegal proceeding."

KEEP OFF THE AIR.—A justice of the peace who lives in Cedar Grove, New Jersey, objects to having flying machines pass over his home. He has erected a sign 10 feet long and 5 feet wide, which reads: "Notice! All Aviators Are Hereby Warned Not to Fly Their Machines Over This House Under Penalty of Imprisonment."

COULD NOT LIVE ON COMMISSIONS.—James Ruffin Bulla, who died in Trinity, North Carolina, several years ago, was for many years a distinguished lawyer, and was noted for his wit almost as much as he was for his legal ability. While living in High Point, in 1877, he received for collection a bill against a local party whom he did not consider responsible, and his reply written, in the usual order of daily business, has become a classic of the bar. It was printed at the time in papers throughout this country, and even in England, but has not now been printed in some years. The full letter is as follows:

"High Point, N. C., Aug. 27, 1877.
"Messrs. J. R. Smith & Co.,
"Philadelphia, Pa.

"Gents:—

"Replying to yours of the 18th inst., I have to say, that for the prospect of having claims placed in my hands to collect, in this vicinity, and nothing more, I do not feel willing to report the 'standing' of the party mentioned, or of anyone else. I do not want to be misunderstood as saying that I do not want paying business, but I do know that a lawyer would starve as quick on commissions and fees on collections as he would on corn-cob soup in January.

"I have had some experience in collecting since the war, or rather in trying to collect. I have offered to compromise claims by taking old clothes, frozen cabbage, circus tickets, patent medicine, whetstones, powder horns, old flour barrels, gourds, coon skins, jay birds, owls, or almost anything, and yet I have a number of old claims on hand unsettled. If I were to depend on collecting claims for my living, my bean broth would get so thin that it would rattle in me like pot liquor in a poor dog.

"I don't like to shoot at long taw, but if you are inclined to pay anything certain for the reports, I'm your man; say ten dollars cash and then I'm in, or if money is scarce, I would take shoes, large Nos., say 10's, 11's, and 12's, to the amount of ten dollars at wholesale prices.

"It's hard times here—the niggers and Democrats have pulled and worried each other until this country smells like cheese. How in the world would you collect money out of a people who plow speckled bulls on hill sides? If you were to see a nigger ploughing his garden with a sow, you would not wonder why I don't want claims to collect in this vicinity.

"Your sincere friend,
"J. R. Bulla."

New York's New District Attorney

Charles Seymour Whitman was born in 1868. His first public office was that of assistant corporation counsel in the city of New York, to which he was appointed on January 1, 1902, under the administration of Mayor Seth Low. He was assigned to the work of representing Mayor Low's administration during the legislative sessions of 1904 and 1905 in Albany, drafting most of the bills introduced in those years on behalf of the city. He attracted attention by his vigorous opposition to a large number of objectionable measures detrimental to the interests of the citizens of New York. Among these objectionable bills were several street railway grabs, the defeat of which was largely the result of Judge Whitman's work.

CHARLES S. WHITMAN

Later in the Low administration, Judge Whitman became the Mayor's legal adviser. Just before Mayor Low left office, he appointed Judge Whitman to the office of city magistrate. Some of Judge Whitman's friends thought it was a mistake for him to accept an office that was generally regarded as being of less importance than the positions he had already held; but as a city magistrate Judge Whitman added very largely to his reputation. He originated the night court, which was a serious blow at the system of the professional bondsmen, who haunted the courts of inferior jurisdiction. By means of this court, in all cases of misdemeanors occurring in New York at night, the defendant is immediately arraigned without being obliged to pass the night in a police station to await arraignment when the magistrates' courts open in the morning. The night court has proved to be a great success.

Judge Whitman's influence as a city magistrate was recognized when the board of city magistrates, though strongly Democratic, elected him, a Republican, as president. While Judge Whitman was serving as president of the board of city magistrates, he was appointed by Governor Charles E. Hughes to be judge in the court of general sessions.

When, in the summer of 1909, the anti-Tammany forces were planning a united attack upon Tammany Hall, Judge Whitman was strongly urged by leading Independents for the nomination for mayor. He possessed elements of strength that easily placed him ahead of any other candidate under consideration. However, in the fusion conferences that preceded the conventions, it was decided at the last moment to nominate Mr. Otto T. Bannard, on the theory that the situation demanded a business man for

mayor, rather than a lawyer. Mr. Bannard, though he made an admirable campaign, was decisively beaten. Judge Whitman, however, who was the unanimous nominee of the anti-Tammany Fusion forces for the office of district attorney, was elected by a plurality of about 30,000 in a county normally Democratic by from 50,000 to 75,000.

Since taking office on the 1st of the year, District Attorney Whitman has appointed as his assistants and deputies a professional staff that is generally regarded as the strongest that ever represented the people in the criminal courts of New York City. Judge Whitman has introduced an innovation in the administration of justice through his department, which is certain to attract much attention throughout the county. On the theory that he is a prosecutor, and not a persecutor, he has determined to correct certain abuses in the police courts of that city, through which impecunious defendants suffer. His plan is to send a representative of his office to each court, with instructions to see that all defendants get a square deal. If the testimony warrants conviction or holding for a trial in higher courts, the district attorney's representative will serve as a prosecutor; if it is insufficient, or if there are irregularities in court procedure, he will act as counsel for the prisoner.

If an appropriation can be secured for the purpose, Judge Whitman proposes to establish a new bureau, chiefly to deal with the automobile problem through a strict enforcement of the criminal law against reckless automobilists who cause death or injury.

Judge Whitman has recently made a searching investigation of the so-called "milk trust" and the so-called "white slave traffic."

Hon. W. M. Key, associate justice of the Texas court of civil appeals, has been appointed to the position of chief justice, to succeed Judge H. C. Fisher, deceased; and Hon. C. H. Jenkins, of Brownwood, Texas, has been appointed associate justice to fill the vacancy caused by the promotion of Justice Key.

Hon. James Breck Perkins, representative in Congress from the thirty-second district of New York, died on March 11th, at the age of sixty-two years. Mr. Perkins was an able, scholarly gentleman, eminent as a historian, and a leader at the Rochester bar. His more important historical works were "France under Richelieu and Mazarin," "France under the Regency," "France under Louis XV," and "Life of Richelieu," during the preperation of which he resided for five years in Paris. Mr. Perkins was serving his fifth consecutive term in Congress. He was recognized as one of the closest students, and one of the best informed men on corporation law to be found at the bar. His last appearance in court was as one of the attorneys in the famous United States Independent Telephone trial, last fall, which continued for five weeks. Associated with Mr. Perkins in the defense were other leaders of the Rochester bar, with John G. Milburn, of New York, as chief counsel. For the plaintiff there were equally eminent lawyers, with ex-Justice Alton B. Parker as chief counsel. In the trial of this case, which probably attracted more attention than any other case that has been before the courts in some years, he took a leading part. Mr. Perkins was also an authority on church law, and will be remembered for his eloquent and masterly defense of Dr. Algernon S. Crapsey, when charges were preferred against the rector by the standing committee of the Western New York Diocese of the Episcopal Church.

Leroy Percy, who has been elected United States Senator from Mississippi, to serve out the unexpired term of the late A. J. McLaurin, is a lawyer and planter of Greenville. He graduated from the University of the South and the Law Department of the University of Virginia, and took a post-graduate course at Princeton University.

Howard C. Hollister has been appointed to be United States district judge to fill the vacancy made by the death of Albert C. Thompson.

MAINE'S ATTORNEY GENERAL

WARREN C. PHILBROOK

Hon. Warren C. Philbrook, attorney general of Maine, is a native of that state, having been born in Sedgwick, county of Hancock, November 30, 1857. In early boyhood he moved with his parents to Castine, Maine, where he retained his home until after graduation from college, in 1882. His academic education was obtained in the public schools of Castine, the Eastern State Normal School at the same place, Coburn Classical Institute, and Colby College, both of Waterville, Maine. After graduation he taught in the State Normal School at Farmington and in the Waterville High School, and was admitted to the bar in 1884. He did not begin the active practice of law until 1887, since which time he has been constantly engaged in the practice of that profession in Waterville. He was twice appointed judge of the municipal court of Waterville, but resigned in his second term by reason of his election to the state legislature. He was twice a member of the last-named body, serving during both terms on the judiciary committee, and in the second term was house chairman of that committee. Subsequent to his legislative experience he was elected twice mayor of his city, but after this political service attended entirely to the practice of law until July, 1905, when he was appointed assistant attorney general for the state of Maine, being the first incumbent to that office, which had recently been created by act of legislature. After serving three years and a half in that position, he was elected by the legislature to be the attorney general of the state, in January, 1909. Mr. Philbrook is a Republican, and has been quite active in political matters ever since he became a voter. He has done considerable work on the stump during the last fifteen years, and his services are always in demand whenever there is a political campaign in his state.

President Taft has nominated Grant T. Trent, of Tennessee for associate justice of the Philippine supreme court, to fill the vacancy caused by the appointment of Judge Elliott to the Philippine commission. Judge Trent is a native of Tennessee. During the Spanish-American war and the Philippine insurrection he was an officer of volunteers. Shortly after his muster out he was appointed a first lieutenant in the regular army, but almost immediately resigned to accept an appointment in the Philippine judiciary, with which he has been connected for ten years, being at the present time a judge of the court of first instance.

Arthur C. Denison has taken the oath of office and entered upon the duties of the position of United States judge for the western district of Michigan.

Judge Henry H. Swan; presiding over the United States court for the eastern district of Michigan, has announced that he will retire within a year. Judge Swan becomes eligible for retirement with full pay on October 2, at the age of seventy.

Judge John F. Philips, of the United States district court for the western district of Missouri, has announced that he will retire from the Federal bench on June 25th of this year. That date will be the twenty-seventh anniversary of his first election to a judgeship in a state court of Missouri.

The retirement of Chief Justice Simeon E. Baldwin from the supreme court of Connecticut, he having reached the judicial age limit, reveals to him and to the public the high estimation in which he is held by the bar and the people. As in the case of President Elliot, all sorts of honorable positions are proposed to him. Judge Baldwin was born in New Haven, February 5, 1840, and early distinguished himself as a scholar. He studied law at the Yale and Harvard law schools, and was admitted to the bar in 1863. Ten years later he was appointed a member of the commission to revise the General Statutes of Connecticut. In 1893 he became an associate justice of the Connecticut supreme court, and since 1906 he has been chief justice of that tribunal. Justice Baldwin has been highly honored by many learned societies, having been president of the American Bar Association, the International Law Association, the American Social Science Association, the American Historical Association, and the Connecticut Society of the Archeological Institute of America. Connecticut has had stronger men in her judiciary than in any other branch of her public service, and it is to-day one of the ablest in the country. Even the nation is indebted to her for the gift of Oliver Ellsworth. Perhaps one feature of this distinction was the law school established in 1784 by Judge Topping Reeve, in the little town of Litchfield. It was the first law school in the country, and was carried on in as primitive a building as one of the old-style district schoolhouses. But it disseminated not only sound legal learning, but a high class of legal ethics. Many graduates went from the dingy old portals who afterward became eminent jurists, including five Cabinet officers,—Woodbury, Mason, Calhoun, Clayton, and Hubbard. It was conducted by its founder until his death, which occurred thirty-nine years after the school was opened. The standards that it established have been well maintained, and of this Judge Baldwin is one of the most conspicuous proofs.

INDIANA'S ATTORNEY GENERAL

JAMES BINGHAM

James Bingham, Indiana's attorney general, is recognized as one of the energetic, hardworking, capable, and successful lawyers of that state. He was born in Fountain county March 16, 1861, and spent the first fifteen years of his life on the farm, in the sawmill, and at work upon the railroad, toiling to secure the means to educate himself. Later he taught in the district schools, and at the early age of twenty-two was elected county superintendent of his native county for two successive terms. He was instrumental in unearthing the notorious Pollard school furniture swindles. These he followed up with vigorous prosecutions.

From exposure and close application to his books he became seriously and dangerously afflicted, and for two years it was feared that he was doomed to become totally blind. It was under these trying circumstances that he was admitted to the Fountain county bar, in 1887. He was unable to read a word, but his good wife came to his rescue, reading to him all the law he got, in court and out. This determined effort, combined with a naturally cheerful disposition and personal magnetism, soon brought him a large and growing practice, and he became one of the most successful practitioners of the state, with his faithful wife a close student at his side,—a charming instance of manly perseverance and wifely devotion. In 1890 he was elected prosecuting attorney for the twenty-first judicial circuit, and made an enviable official record. He has resided in Muncie for the past sixteen years. He is a clear thinker and a pleasing and convincing speaker. As attorney general he

has been prompt, courteous, and fearless in performing the responsible duties of his office, to which he was re-elected in 1908, although some of his fellow candidates on the state ticket were defeated.

Judge B. L. D. Guffy, formerly chief justice of the Kentucky court of appeals, died recently at his home in Montgomery, Kentucky, aged seventy-seven years.

Judge Charles Betts, formerly one of the leaders of the Stephenson County Bar, died at Freeport, Illinois, at the age of eighty-five years. Judge Betts was one of the noted orators of antebellum days, and was a staunch supporter of Senator Douglas.

Martin L. Bundy, who died recently in New Castle, Indiana, was identified with the public affairs of the state as legislator and judge for many years. He was a member of the Philadelphia convention which in 1856 nominated John C. Fremont for President. He was ninety-three years old at the time of his death.

Judge William F. Brannan, aged eighty-five, died on February 12th in Muscatine, Iowa. He held the position of judge of the seventh judicial district longer than any other man. He was the oldest trustee of the State University of Iowa, and had been prominent in the politics of the state for forty years.

Judge Benjamin P. Cissell, aged eighty-eight, died recently at his home in Henderson, Kentucky, of the infirmities of age. He served as circuit judge of the fifth judicial district, which was composed of the counties of Henderson, Crittenden, Webster, and Union, for eighteen years. After retiring from the bench, he entered upon the practice of the law, which he followed until ill health caused his cessation from active practice. Judge Cissell served as state senator, and later as commonwealth's attorney.

James Ridgway, formerly United United States commissioner, and one of the best-known legal practitioners in the vicinity of New York, dropped dead on March 3d in the supreme court, during the hearing of a case to which he was a party. Mr. Ridgway was eighty-one years old. He had made a specialty of criminal, admiralty, and customs revenue law for nearly half a century, and had handled a number of important cases. His most important case was the trial of the captain and mates of the bark Anna, charged with the murder of several members of the crew, in which he got an acquittal. At the beginning of the Civil War he was counsel for the first person arrested in New York state for treason, and got an acquittal. He was associate counsel in the case of the Confederate privateer Savannah.

In 1865, while a member of the state legislature, he delivered one of the eulogies on Lincoln before the assembly, after the President's assassination.

James Edward Shephard, formerly chief justice of the supreme court of North Carolina, died at a hospital in Baltimore, where he had undergone an operation for throat trouble. He was sixty-four years of age. After retiring from the bench, Judge Shephard had engaged in the practice of law at Raleigh.

Judge David E. Bryant, of Sherman, Texas, United States judge for the eastern district of Texas, died as the result of a stroke of apoplexy, at a hospital in St. Louis. He was sixty years old, and was appointed by President Harrison in 1890.

Judge H. C. Fisher, chief justice of the Texas court of civil appeals, died recently at the age of fifty-two years.

Joshua Stark, the oldest member of the Milwaukee County Bar Association, died at the age of eighty-two years. Mr. Stark located in Milwaukee in 1851, where he became one of the leaders of the bar. He held the position of city and district attorney, school director and member of the legislature.

OUR OPEN FORUM

Editor CASE AND COMMENT:

I read with a great deal of interest the article in the Literary Digest of February 12, 1910, entitled "The Helpless Police." Mr. Hugh C. Weir's article in the World Today is quoted freely; and while he has doubtless acquainted us with much truth, I doubt his accuracy on some facts and statistics about murder in our country; and I question the wisdom of printing such statements, even if they were absolutely exact.

We judge the morality of a literary effort not so much by its subject-matter as by the lesson which it naturally teaches. Any disertation, therefore, which attempts to demonstrate that crime may be effectually perpetrated, and punishment therefor successfully avoided, has rendered depravity attractive, and has a tendency to increase crime. Mr. Weir says: "Of the murderers, two in every hundred are punished. The remaining ninety-eight escape absolutely free." Mr. Weir states this with precision, but suggests no remedy, and has not therefore, rendered society at large any valuable service. If you tell a man who is ill that he looks very unwell, he is not benefited at all; but you prescribe a remedy, and you will see his eyes brighten up immediately, for he is grateful. Say to the public, as Mr. Weir does, "that in only 1.3 per cent of our homicides do we secure a conviction," and if the intelligence of the people will allow them to believe the astonishing declaration, they will doubtless concur (like the sick man) with the learned man from Chicago that this is a most deplorable fact; but where is the remedy? I consider Mr. Weir's article to be immoral, because it advises the would-be-murderer that homicide may be committed almost with impunity, and that his chances of being detected and convicted are only one in a hundred. An awful mistake. "Murder will out." The whole creation of God has neither nook nor corner where such a secret is safe. Not to speak of that eye which pierces through all disguises and beholds everything as in the splendor of noon, such secrets are not safe from detection even by men. Providence has so ordained and so governs things that those who break the great law of Heaven by shedding man's blood seldom succeed in avoiding discovery. Thousands of eyes turn at once to explore every man, every thing, every circumstance connected with the thing and place. Thousands of ears catch every whisper, thousands of excited minds intensely dwell on the scene ready to kindle the slightest circumstance into a blaze of discovery. Meantime the guilty soul cannot keep its own secret. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed upon by a torment which it dare not acknowledge to God or man. A vulture is devouring it, and it cannot ask any assistance from heaven or earth. The murderer's secret becomes his master; it breaks down his courage; it conquers his prudence; and when suspicions from without begin to embarrass him, and the net of circumstances to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed; there is no refuge from confession but suicide, and suicide is confession. This is the last chapter in many murder cases. The murderer may in one sense "escape," but certainly does not "escape absolutely free."

Mr. Weir also says "there are four and one half times as many murderers for every million of our population today as there were twenty years ago." Yes, and if writers continue to agitate the subject it will be on the increase at a more rapid rate. . . . I wouldn't even criticize such ridiculous assertions, were they on a less dangerous subject. But for the sake of public morals and the honor of our nation, I cannot allow such absurd statements to go unanswered. Such is human nature that some persons lose their abhorrence of crime in their admiration of its magnificent exhibition. Ordinarily, vice is reprobated by them, but extraordinary guilt, exquisite wickedness, the high flights and poetry of crime, seize on the imagination, and lead them to forget the depths of guilt in the admiration of the performance or the unequaled atrocity of the purpose.

Modern newspapers have made use of this infirmity in human nature, and, by means thereof, done infinite injury to the cause of good morals. They have affected not only the taste, but I fear also the principles, of the young, the heedless, the weak-minded, and the imaginative by showing off crime under all the advantages of cleverness and dexterity. Such newspaper reports should be suppressed, and sensational criminal trials should be held in chambers.

B. H. HEWITT.

New London, Conn.

THE HUMOROUS SIDE

If a laughable story comes your way, send it to Case and Comment, and we will pass the laugh along.

APPLYING THE MAXIM.—"Ignorance of the law," said the judge, "is no excuse for crime." "May I inquire of your honor," asked the prosecuting attorney, "whether your Honor's remark is directed at the defendant or his counsel?"—Chicago Record-Herald.

THE COROLLARY.—Lawyer (losing his temper after trying for an hour to explain a point to a thick-headed witness) —"Confound it, any fool can understand this."

Witness—"Yes, but unfortunately he can't make himself clear, can he?"—Democrat & Chronicle.

THE HIGH PRICE.—"Talk is cheap," snarled the attorney when the judge had criticised his method of cross-questioning.

"I fine you $50 for contempt of court," replied the jurist. "What do you think about the price of talk now?"—Chicago Record.

WHAT HE DID.—The court room was crowded. A wife was seeking divorce on the grounds of extreme cruelty and abusive treatment. Guns, axes, rolling pins, and stinging invectives seemed to have played a prominent part in the plaintiff's married life.

The husband was on the stand undergoing a gruelling cross-examination.

The examining attorney said: "You have testified that your wife on one occasion threw cayenne pepper in your face. Now, sir, kindly tell us what you did on that occasion."

The witness hesitated and looked confused. Every one expected that he was about to confess to some shocking act of cruelty. But their hopes were shattered when he finally blurted out:

"I sneezed."—Everybody's Magazine.

HOW IT WAS.—Against an old Georgia negro charged with stealing a pig, the evidence was absolutely conclusive, and the judge, who knew the old darkey well, said, reproachfully:

"Now, uncle, why did you steal that pig?"

"Bekase mah pooh family wuz starvin', yo' Honoh." whimpered the old man.

"Family starving!" cried the judge. "but they told me you kept five dogs. How is that, uncle?"

"Why, yo' Honoh," said uncle, reprovingly, "you wouldn't 'spect mah family to eat dem dogs."—Harper's Monthly.

GREENLEAF POOR AUTHORITY.—Two brother lawyers were trying a case before a rural justice of the peace in Arkansas, and there arose a question of the admissibility of evidence. The attorney for defendant read a passage from Greenleaf's first volume on Evidence, to sustain his point; and the justice of the peace was about to admit the offered evidence, when the attorney for plaintiff said: "Hold, let me show you that Greenleaf admitted that all he said was not law;" and turning to the advertisement he read: "The work might have been much better executed by another hand, for, now it is finished, I find it but an approximation towards what was originally desired."

"Now, he desired to write the law," continued the attorney, "but that is as far as he got; for he admits he only approximated it, and we all know that to approximate just means to get near to it. I'm surprised that my learned opponent should read from such an authority."

"That's what I think, too," remarked the justice, "and he can't expect me to follow it. Where a man says himself he has not found the law, how does he expect me to say he has got it right in his book? The evidence can't come in, and I give judgment for plaintiff."

HEARSAY EVIDENCE.—"Elijah," said the judge to the defendant, "you have had a fair trial. The prosecuting attorney has shown by circumstantial evidence that cannot be gainsaid that you were in Mr. Brown's chicken coop on the night that his hens disappeared, and your attorney in his speech has practically admitted that the theory of the prosecution is true. Have you anything to say before the court pronounces its decision?" "Jedge," said Elijah, rising politely, "all I's got to say is dis. I don't know much about de law, but I does know heahsay evumdence isn't good, an' all dese lawyehs says is heahsay. I oughter know, foh I uz de only man in that chicken coop dat night, an' I's denied it raight erlong."—Chicago Post.

HAD NO LAWYER.—The following is an incident related by a prominent member of the bar of California, concerning his early struggles in the legal profession. He had been assigned by the court to defend a Chinaman charged with burglary. The Celestial's guilt was plainly evident, for there was not a show of defense, but still he refused to plead guilty. It was our attorney's first case, and so he worked with great diligence, but the jury promptly returned a verdict of guilty. On the day set for sentence the judge asked the defendant if he had any statement which he wished to make before sentence was pronounced. The Chinaman replied: "Me no have lawler—if me have lawler, me go free."—The National Corporation Rep.

MIXED METAPHORS.—A lawyer defending a criminal whose defense was hereditary insanity, wishing to impress the jury with the insidiousness of the defendant's hereditary ailment, made use of the following quaint and curious figure of speech: "All along the untrodden paths of the past we behold the footprints of an unseen hand."

This recalls the Irish barrister who exclaimed: "Gentlemen of the jury, it will be for you to say whether this defendant shall be allowed to come into court with unblushing footsteps, with the cloak of hypocrisy in his mouth, and draw three bullocks out of my client's pocket with impunity."

A DILEMMA.—Lawyer—"Well, what's the trouble?"

Rastus—"Ah wants advice 'bout calling a man a liar."

Lawyer—"Explain."

Rastus—"Well, yo' see ah can't write, and ef ah could nobody could read it, and ah can't tell him to his face 'cause he's def, and if ah should happen to make him hear he'd punch mah head."

BUT A LITTLE WHILE.—A bigamist married a woman, and one of the witnesses afterward admitted to the officiating clergyman that he had known of the bridegroom's legal inability to wed.

"But if you knew," said the clergyman, indignantly, "why didn't you tell me?"

"Well, parson, it is like this," the witness said, "One of the parties was eighty-three and the other was eighty-seven. I says to myself. 'Oh, gosh; it can't last long. Let 'em marry, and durn the law!' "—Washington Star.

NO NEED FOR HASTE.—A young "briefless" was perambulating the courts with an air of scarcely being able to find time to do anything,—when his boy tracked him down in one of the corridors.

"Oh, sir!" said the boy, "there is a man at your office with a brief, sir."

"What, a brief! Great heavens!"

And the young fellow began to run through the passages as fast as he could for fear the prey should escape him.

"Stop, sir, stop!" cried the boy, who could scarcely keep pace. "You needn't hurry, sir; I've locked him in!"—M. A. P.

CONCLUSIVE PROOF.—"Why," asked the judge, "do you think your husband is dead? You say you haven't heard from him for more than a year. Do you consider that reasonable proof that he has passed out of existence?" "Yes, your Honor. If he was still alive he'd be askin' me to send him money."—Chicago Record-Herald.

LAWYER, CHIROGRAPHER, ASTROLOGER, AND AGENT.—An enterprising lawyer located on the Pacific coast devotes the back of his letter heads to the following extensive advertisement of his varied lines of business and accomplishments:

Attorney at Law, Notary Public, Advice and Consultation in Law Free.

Complete Courses in Penmanship and Bookkeeping.

The advantages of being a first-class penman cannot be over-estimated. I have an excellent system of teaching the art of penmanship, and, being an expert penman myself, I have been very successful with my pupils. Samples of writing on request.

Expert Penwork at Moderate Prices.

I design and write special cards and memorials to order. A complete set of capitals for practice work will be sent for 10 cents. Flourishing a bird, swan, or eagle on paper 8x10 inches for 25 cents. Flourishing a deer, with lake and flowers, a horse or a lion, on a sheet of cardboard 22x28 inches, for $5.00. Family records, memorials, etc., 16x20 inches furnished and filled. Visiting cards written for only 15 cents a dozen. All work guaranteed to please.

Astrology.

A Pen Copy of your life by Astrology, the Wonderful Whispering of the Stars, for $1.00. Send date of birth.

Indemnity Insurance.

Fidelity Indemnity Insurance Co. of Maryland will go your bonds. I am agent for this company. Write for particulars.

Real Estate Directory.

For 25 cents I will put your name on my Directory and make an endeavor to send you a buyer for any property you may desire to dispose of.

Pens at the rate of 7 for 5 cents, 15 for 10 cents.

A novel feature of this attorney's correspondence is said to be the invariable use by him of his notarial seal upon his letters in connection with his signature. His portrait also adorns the upper left-hand corner of the letter head.

TOO LITERAL.—"Do you know the prisoner well?" asked the attorney.

"Never knew him ill," replied the witness.

"Did you ever see the prisoner at the bar?"

"Took many a drink with him," was the reply.

"How long have you known this man?"

"From two feet up to five feet ten."

"Stand down," yelled the lawyer in disgust.

"Can't do it," said he. "I'll sit down or stand up."

"Officer, remove that man."

And he did.—Pittsburg "Chronicle-Telegraph.

PROPHETIC DECISION.—"I once tried a case before an Arkansas Justice of the Peace who spoke English rather brokenly," writes the attorney who represented the plaintiff. "When the evidence was all in and the argument closed, the justice said, 'Vell I takes this case under advisement undil next Cheusday morning, at vich dime I decides for de blaintiff.'"

WEAK SPOT IN HIS DEFENSE.—A religious worker was visiting a Southern penitentiary, when one prisoner in some way took his fancy. This prisoner was a negro, who evinced a religious fervor as deep as it was gratifying to the caller.

"Of what were you accused?" the prisoner was asked.

"Dey says I took a watch," answered the negro. "I made a good fight. I had a dandy lawyer, and he done prove an alibi wif ten witnesses. Den my lawyer he shore made a strong speech to de jury. But it wa'nt no use, sah; I get ten years."

"I don't see why you were not acquitted," said the religious worker.

"Well, sah," explained the prisoner, "dere was shore one weak spot 'bout my defense — dey found the watch in my pocket."—Tit-Bits.